

When the next natural disaster, epidemic or terrorism act hits, will the stricken states be able to put enough health professionals from other states quickly to work?

Physicians and other health care practitioners from all over responded to the Gulf Coast hurricanes of 2005, but licensure questions held many back, and others did not come because of liability concerns.

Some who showed up helped in other ways while they waited. Others took the chance and helped victims anyway. In the face of these stories, the Uniform Law Commission began in 2006 to write a model state law to create a standard system that would put valued volunteers to work faster and in a more coordinated manner, and allow professionals from other states to understand what protections they have.

The final version of the “Uniform Emergency Volunteer Healthcare Practitioners Act” was completed last fall, although earlier versions have already been passed in three states. It has been introduced in at least six states this year and a coalition of professional organizations is pushing it across the country.

Twelve attorneys at the Uniform Law Commission drafted this model law, working with about 21 national “observer” organizations who participated in the discussions, including the American Red Cross, the American Medical Association and the Federation of State Medical Boards.

“Every state in its emergency management code has the power to waive state laws in the event of disastrous emergencies. And they do it routinely,” says attorney Raymond Pepe, who chaired the drafting committee. “The problem is they all do it differently and this ad hoc reliance on emergency powers hasn’t proved particularly effective.”

Pepe explains that in an emergency, issuing executive orders may not be the highest priority. “You want to save lives first,” he says. “Disruptions in communication may make it difficult, even when the orders are signed, for people to know that they were signed.”

The proposed law, which each state can reject, adopt or adapt, would cover the services of a range of health professionals, as

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LICENSE TO SERVE

A MODEL LAW COULD MAKE IT EASIER FOR MEDICAL VOLUNTEERS TO RESPOND IMMEDIATELY DURING EMERGENCIES.



well as pharmacists, morticians and veterinarians. It would do three major things to encourage professionals to volunteer:

- ◆ Establish a system of uniform, quick recognition of licenses for registered out-of-state professionals.
- ◆ Provide volunteers with some liability protection.
- ◆ Give them workers’ compensation if they

don’t otherwise have access to that kind of coverage.

The licensure provision would allow states to recognize the professionals’ licenses if they register—before or after the emergency starts—under one of a variety of registration systems, including federal and professional association systems, such as the American Medical Association. The registration would

OTHER APPROACHES AFOOT



Other groups are looking at broader ways to develop protections for professionals responding to emergencies.

A coalition of emergency, public health, medical and other groups are pushing in several states for the Good Samaritan Entity Liability Protection law.

Most states have Good Samaritan laws, says Gene Matthews of the North Carolina Institute of Public Health, but many don't give liability protection to entities such as the Red Cross, a power company, churches or businesses that perform services such as transporting medications. Matthews is leading a national initiative to develop common legal preparedness practices regarding liability laws and sick leave policies during emergencies. Trust for America's Health, which tracks and publicizes states' disaster readiness, endorsed the approach in December.

Determining what types of organizations should receive liability protection and under what circumstances isn't easy and means this proposal is getting extensive scrutiny in many states.

Another organization looking at the issue is the State Alliance for E-Health, which is staffed by the National Governors Association and includes state legislators as members. It recommends that in this age of diminishing boundaries, states consider a licensing system that would allow physicians and other health professionals to practice across state lines.

determine if the professionals are licensed and in good standing.

The model law would mandate that out-of-state volunteers work under "host entities" that already deliver health services in the stricken state such as doctors' offices, disaster relief organizations, hospitals, clinics, emergency shelters, outpatient centers and veterinary clinics. The hosts would be required to coordinate with local emergency agencies as indicated by state law.

"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," the Uniform Law Commission cautions.

James Hodge, a professor at Johns Hopkins School of Public Health who helped write the model law, says the drafters knew that its second major provision, liability protection for volunteers, would likely stir the most controversy.

"I think it's actually the premier issue for volunteers," he says. "They are concerned about the potential for them to be held accountable for what may be viewed—after the emer-

gency—as negligence in care. This is a huge disincentive for people to actually volunteer."

So the proposal gives states alternative provisions to consider.

Under Alternative A, if volunteers register, come into a state, and do what the state wants, they will not be held liable for acts of ordinary negligence, Hodge explains.

But he cautions, "If you act in a criminal way, or in a willful, wanton, sort of grossly negligent way you may still be held liable."

Alternative B gives that protection from ordinary liability to a narrower group: people who earn nothing or very little during the time they volunteer.

Pepe notes, however, the law does provide some definitions on what constitutes earning little or nothing. "For example, if your employer decides to keep paying you while you are out on leave, that is not compensation for being a volunteer."

Alternative B, says Hodge, "was something of a concession to people who were concerned about extensive, expansive liability protection."

Alternative A, he says, "is more reflective of existing state and federal laws that provide strong liability protection for distinct classes of volunteers in all sorts of settings."

Finally, the model law requires the host state to provide workers' compensation benefits similar to those given to state employees if a volunteer is hurt or injured and does not have such coverage.

Hodge says that when prospective volunteers know a state has this type of law, they will be assured they can show up to help. "They will know they can provide services without significant concern about being sanctioned for violating licensure provisions," he says. "They'll know they will be safe from being liable for negligence. They'll know that if they suffer injury or death, they'll be compensated."

So far, Colorado, Kentucky and Tennessee have passed versions of the model law. It has been introduced this session in Hawaii, Indiana, New Mexico, Oklahoma, Pennsylvania and Utah. Last year in California the legislation failed to pass and isn't expected to be reintroduced. 

 **CHECK OUT** more information on the model law and information on Good Samaritan liability initiatives at *State Legislatures* online www.ncsl.org/magazine.