State Laws Providing Liability Protections for Healthcare Workers during Declared Emergencies

Question Presented

What types of laws have states enacted to provide liability protections to public and private sector health care workers (HCWs) and volunteer health practitioners (VHPs) who respond during declared emergencies?

Brief Response

State legislatures may provide immunity for HCWs and VHPS during declared emergencies in multiple ways. These include:

1) immunity provisions stemming from emergency laws that take effect upon a formal declaration of public health emergency, emergency, or disaster;
2) comprehensive “Good Samaritan” laws that extend immunities during declared emergencies; and
3) measures that convert HCWs and VHPs into state agents during declared emergencies, thus providing them with liability protections under the state’s sovereign immunity laws.

Examples of these 3 legal protections are provided below [including hyperlinked access to each statutory provision in the corresponding references].

Analysis

Emergency Laws:

The State of Louisiana has enacted specific immunity provisions as part of the emergency powers that go into effect when a formal declaration of emergency has been issued. During a declared state of public health emergency, “any health care providers shall not be civilly liable for causing the death of or injury to, any person
or damage to any property except in the event of gross negligence or willful misconduct.”¹ In addition, during a declared state of emergency,² medical personnel who provide health care services are not civilly liable for any acts or omissions that may cause damage or injury unless their behavior is grossly negligent.³

New Jersey has enacted provisions of the Model State Emergency Health Powers Act (MSEHPA) to provide liability protection to health care workers during a declared public health emergency. In New Jersey, employees of public or private entities who assist in a public health emergency are granted immunity for most liability claims.⁴

**Good Samaritan Laws:**

Florida’s legislature has extended liability immunity to HCWs during a public health emergency into its Good Samaritan law. Under this law, those who provide medical assistance in response to a public health emergency cannot be held liable for any civil damages that arise as a result of their acts or omissions as long as they act as a reasonably prudent person would have under the circumstances.⁵ As in other states, these immunity protections only go into effect once an emergency is declared, and cease once the state of emergency is terminated.

**State Sovereign Immunity Laws:**

Oregon treats emergency VHPs as state employees for purposes of liability protection.⁶ Those who voluntarily provide emergency health care services are considered agents of the state and are protected from many liability claims through the state’s sovereign immunity laws pursuant to an emergency declaration.

Arizona has taken multiple approaches to providing liability protection to HCWs during an emergency. For example, HCWs who provide assistance during a declared state of emergency are immunized from most liability claims as long as they act in good faith.⁷ In addition, all emergency workers are treated as state employees for liability purposes and receive protection under the state’s sovereign immunity provision.⁸

**Conclusion**

Various states apply numerous approaches to provide liability immunity for HCWs who respond during an emergency. These select examples may provide a framework for establishing emergency liability protections for HCWs in Alaska in consultation with legal counsel.

In addition, a cursory review of Alaska law revealed that some liability protections for HCWs in an emergency may already exist (see for example, Alaska Stat. § 09.65.090). Emergency medical technicians (EMTs) and their supervisors may already protected from liability via Alaska Stat. § 18.08.086. Application and interpretation of these laws should be explored further with legal counsel.

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SUPPORTERS

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References

1 29 L.R.S. § 771 (B)(2)(c)
2 Note - not all states distinguish declared states of emergency and public health emergency.
3 37 L.R.S. § 1731.1(A)
4 N.J.S.A. § 26:13-19
5 F.S.A § 768.13
6 O.A.R. 333-003-0210
7 A.R.S. § 36-790
8 A.R.S. § 26-314(C)