



Citizen Corps Volunteer Liability Guide

An Overview of Legal Issues and Approaches to Address Liability for Emergency Volunteers



FEMA

Contents

Preface	1
Introduction	3
References	4
I. Volunteers and Liability	5
A. Who Are Volunteers?	5
1. Community volunteers.....	5
2. Good Samaritans	5
3. Government sponsored and managed emergency volunteers	5
4. Voluntary organizations and emergency volunteers managed by nongovernmental organizations..	5
5. Spontaneous volunteers	6
B. The Liability Landscape for Emergency Volunteer Programs	6
1. The law can be difficult to find and understand	6
2. Protection is inconsistent from state to state.....	6
3. Nongovernmental organizations are not well protected	6
4. Volunteers sometimes have multiple affiliations.....	7
5. Spontaneous volunteers	7
II. Laws and Liability	9
A. Overview of the Law	9
B. Types of Liability	10
1. Civil liability.....	10
2. Injury benefits for emergency volunteers.....	12
3. Penalties for breach of licensing and certification requirements	12
Conclusion.....	12
References	13

III. Sources of Liability Protection.....	15
A. Civil Liability	15
1. Volunteer protection acts	16
2. Good Samaritan laws	18
3. Emergency management and homeland security statutes; and governmental immunity laws and tort claims acts.....	20
4. EMAC and other mutual aid.....	24
B. Evaluating Injury and Illness Protection for Emergency Volunteers	26
C. Penalties for Breach of Licensing and Certification Requirements.....	28
References	30
IV. Risk Management.....	35
A. How Does Risk Affect Programs and Volunteers?.....	35
B. How Does a Council or Program Identify Possible Risk Events and Establish Priorities?	36
1. Identifying how risk can affect a Council or program.....	36
2. Establishing priorities	37
C. Controlling the Effects of Risk.....	38
1. Selecting volunteers	38
2. Preparing volunteers for their roles and protecting their safety.....	39
3. Managing volunteers.....	40
D. Integration of Risk Control Practices and Program Activities	42
E. Other Financing.....	43
1. Volunteer liability	43
2. Volunteer injury.....	44
References	45
V. Using and Improving State Law to Address Volunteer Liability.....	47
A. Step One: Understanding Existing State Law	47
Resources.....	47

1. State or local government attorney; volunteer private attorneys	47
2. Risk managers	48
3. Peer networking	48
4. State attorney general.....	48
5. Questions to ask	48
B. Step Two: Working Within Existing State Law	49
C. Step Three: Changing State Law	49
References	51
Conclusion.....	53
Appendix 1: Glossary of Terms	55
Appendix 2: Volunteer Liability Checklists	59
Appendix 3: Links to State Statutory and Legislative Websites	67
Appendix 4: Finding Statutes and Bills Online.....	85
Appendix 5: Additional Resources	91

Preface

Citizen Corps is FEMA’s grassroots strategy to build a nationwide culture of emergency and disaster preparedness to support national and community resilience. Citizen Corps Councils bring together government and community leaders to engage individual members of the public and organizations from all sectors to collaborate on preparedness planning, emergency response, and disaster mitigation and recovery.

Engaging the public is a critical part of Citizen Corps’ mission. Well-trained volunteers supplement governmental resources in all phases of emergency management. Identifying and supporting policy and practice that promote and strengthen public participation is, therefore, an important element of Citizen Corps’ implementation.

FEMA has learned from Citizen Corps Councils, volunteer program managers, and volunteers that liability is a significant concern and a potential barrier to volunteer involvement in emergency services. Liability—legal responsibility for one’s acts or omissions—includes diverse concerns: legally imposed payment of damages for personal injury or property damage; penalties for practicing a profession or trade without the required license or permit; compensation for lost income and medical expenses of an injured volunteer; and damages for breach of contract.

To offer guidance in this area, FEMA funded the nonprofit Public Entity Risk Institute (PERI) to develop the Citizen Corps Volunteer Liability Guide (CCVLG) to provide an overview of liability and to suggest some approaches to addressing these concerns.

The material in this Guide is offered for general information purposes only. It does not provide legal advice, and the user is encouraged to seek out state-specific counsel from a qualified attorney before taking any action. This Guide also does not address specialized liability issues, such as liability based on credentialing and privileging of healthcare workers, accreditation of healthcare facilities, privacy laws, and quarantine decisions. Descriptions of statutory provisions have been paraphrased to make them easier to read, and the user is encouraged to review the complete statutory language. Links to all state statutory websites have been provided for this purpose. Finally, while there can be no guarantees against being sued, being informed on the issues can minimize your risk.



Introduction

Liability and liability protection for emergency volunteers (volunteers in preparedness planning, emergency response, and disaster mitigation and recovery) are usually matters of state law. These laws differ significantly: some states provide much better emergency volunteer liability protection than others. In addition to appearing inequitable, these differences create a barrier to interstate mutual aid. Organizations that manage volunteers are reluctant to respond to a disaster in another state if their volunteers' licenses will not be recognized, or if they will have less liability protection and fewer workers' compensation benefits than are offered in their home state. The complexity, uncertainty, and lack of parity between states leaves many advocating a comprehensive federal solution, but Congress has not acted, despite a flurry of bills introduced in Congress in 2005 and 2006.¹

One factor that may hinder congressional action is a reluctance to pass a law that takes the place of state liability laws. Congress has previously enacted volunteer protection legislation based on its power to regulate interstate commerce under the U.S. Constitution. It specifically named the Commerce Clause of the Constitution as its source of authority to pass the federal Volunteer Protection Act of 1997 (VPA). However, the VPA's protection is limited in ways that leave much control of this issue in the hands of the states.

Another limiting factor is the complexity of the political process. It can be difficult for legislators to reach the degree of consensus required to pass even non-controversial legislation. The difficulty increases where there is opposition, which there often is for legislation that affects liability. Prior versions of the VPA were on each Congress' legislative agenda from 1989 until the VPA was finally passed in 1997 by the 105th Congress. For the present, therefore, it seems that liability protection for most emergency volunteers is likely to remain at the state level.

To address this potential barrier to volunteerism, PERI, a nonprofit, non-membership organization, has developed the CCVLG under a Cooperative Agreement with FEMA's Community Preparedness Division. In addition to specifically assisting state, local, and tribal governments, local Citizen Corps Councils, and Citizen Corps Partner Programs and Affiliates, the CCVLG is designed to help any individual or organization that is interested in emergency volunteer liability issues.

Those who may benefit from the CCVLG include:

- Citizen Corps Councils and their partners
- State, local, and tribal governments
- Public safety agencies
- Voluntary and human services organizations
- Businesses and organizations of businesses, such as Chambers of Commerce
- Organizations that host emergency volunteers

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- Trainers of emergency volunteers
 - Individual emergency volunteers

The CCVLG consists of the following resources:

- Citizen Corps Volunteer Liability Manual
- Glossary of Terms
- Volunteer Liability Checklists
- Links to State Statutory and Legislative Websites
- How-To Guide on Finding Bills and Statutes Online
- References and Additional Resources

The author gratefully wishes to acknowledge the support and assistance of the many Citizen Corps organizers and volunteers, and representatives of Citizen Corps Program Partners, who offered their ideas and suggestions for the CCVLG. Also, the author gratefully acknowledges the assistance of Gene Matthews and other staff members of the Public/Private Legal Preparedness Initiative at the University of North Carolina at Chapel Hill Gillings School of Global Public Health.

References

1. One example is S.1747 GIVE Act of 2005 (introduced in Senate during the 109th Congress on September 21, 2005), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s1747is.txt.pdf (accessed June 10, 2009).

I. Volunteers and Liability

A. Who Are Volunteers?

A volunteer is an individual who willingly gives time and effort to an activity without compensation: simply put an unpaid worker. For the purpose of this discussion, PERI has grouped volunteers into five categories that may have different liability protection based on their affiliation (or lack of affiliation) and functions.

1. Community volunteers

Community volunteers are often individuals who agree to perform unpaid work for a school, faith-based institution, community-serving social service, humanitarian organization, artistic organization, or emergency services organization. These volunteers perform work that is the backbone of much of what we value about our society. State and federal volunteer protection statutes (codes of laws enacted by the elected members of the legislatures of federal, state, territorial, tribal, and local governments) are designed to encourage volunteers' work by protecting them from liability for ordinary negligence. Volunteer protection statutes usually limit protection to volunteers who are affiliated with government or nonprofit organizations.

2. Good Samaritans

A Good Samaritan is someone who, usually without obligation or compensation (i.e., voluntarily), provides assistance to a victim at the scene of an injury or sudden emergency where there is no ready access to professional care or assistance. Good Samaritan laws reduce the barrier of liability by providing immunity from liability for ordinary negligence. Good Samaritans often act independently and may or may not be affiliated with an official organization.

3. Government sponsored and managed emergency volunteers

Emergency management increasingly utilizes organized and trained groups of volunteers that supplement professional emergency responders. To address their needs, many emergency management statutes now protect registered emergency volunteers from civil liability, provide emergency volunteer injury benefits, and recognize licenses, certificates, and permits from other states.

4. Voluntary organizations and emergency volunteers managed by nongovernmental organizations

Nongovernmental organizations (business and nonprofit) have demonstrated that volunteerism in the emergency context extends far beyond unpaid individuals working at the scene of an emergency. For

example, a hospital may permit volunteer healthcare providers to provide disaster medical assistance at its facility. A nonprofit organization may screen and train volunteers to respond in an emergency. Businesses may donate supplies, equipment, and the time of their employees. At present, these organizations and sometimes their workers and volunteers are not protected from liability for their emergency preparedness and response activities in most states, but efforts are underway to increase their protection.

5. Spontaneous volunteers

Emergency management and voluntary response organizations strongly encourage potential emergency volunteers to join response organizations before a disaster. Still, significant numbers of unaffiliated, untrained, and unscreened individuals may come to the scene of a disaster to offer help. Without provisions to register them at the scene, these spontaneous or unaffiliated volunteers are unlikely to receive liability protection or injury benefits.

B. The Liability Landscape for Emergency Volunteer Programs

A sponsoring entity that has a sound grasp of emergency volunteer liability protection can more effectively recruit, train, and use volunteers. Achieving that sound grasp poses the following challenges:

1. The law can be difficult to find and understand

State statutes, case law, and regulations all affect emergency volunteer liability protection. Most states' statutes and regulations are available online, but finding them can be difficult for someone unfamiliar with legal research. States organize their statutes and regulations differently, so there is no single place to look. A statute's or regulation's meaning is also affected by case law, which can be difficult to find and interpret. Bringing these diverse sources of law together with confidence usually requires a legal professional.

2. Protection is inconsistent from state to state

The protection provided to emergency volunteers differs from state to state. This is a barrier to interstate volunteerism, which is an increasingly important part of emergency response. The Emergency Management Assistance Compact (EMAC) was designed to protect states and their officers and employees, and thus does not protect emergency volunteers unless they are included in their state's official response forces.

3. Nongovernmental organizations are not well protected

Many nongovernmental organizations (business and nonprofit) volunteer in emergency preparedness and response efforts, but protection for nongovernmental organizations is one of the biggest gaps in emergency volunteer protection. This omission is gaining recognition, but so far only a few states have adopted statutes that specifically protect nongovernmental organizations.

4. Volunteers sometimes have multiple affiliations

Some emergency volunteers continue to be paid by their employer during their volunteer service. Many statutes that protect emergency volunteers limit that protection to uncompensated workers. If an emergency volunteer is paid by his or her regular employer while participating in emergency activities, the volunteer may not qualify for liability protection. Depending on state law and the degree of control the employer retains over the employee-volunteer during an emergency response, the employer may be responsible for workers' compensation benefits if the employee is injured or killed and for liability to third parties arising from the employee's actions.

5. Spontaneous volunteers

Emergency volunteers include individuals who come to the scene of a disaster to offer help, but are not affiliated with any emergency response agency in advance. These spontaneous or unaffiliated volunteers are unlikely to receive liability protection or injury benefits. The issue of liability protection is just one of many factors that make the management of spontaneous volunteers a serious challenge in emergencies.



II. Laws and Liability

A. Overview of the Law

Our government establishes rights and responsibilities through its system of laws. Laws are considered a system because they come from more than one source and they work together. A basic understanding of this system helps one understand the laws that affect emergency volunteer liability.

The components of the legal system include the following:

- **Constitutions** outline the principles of a government and provide a foundation for its exercise of powers. Federal and state governments have constitutions.
- **Statutes** are codes of laws that are enacted by the elected members of the legislatures of federal, state, territorial, tribal, and local governments.
- **Regulations** are rules adopted by government agencies to implement statutes.
- **Common law or case law** is a body of legal principles derived from the decisions of federal and state courts in individual lawsuits, which factor into deciding the outcome of later cases.

There is also a distinction between criminal and civil law.

Criminal law governs actions that are so serious that they are prohibited by law. A criminal act is an offense against society as well as the victim, so the government, rather than the victim, brings the offender to court (prosecution). Criminal liability is punishment for criminal acts, which may include fines, imprisonment, a payment of restitution to the victim, and community service. Both individuals and organizations are subject to criminal liability. For an emergency volunteer, important criminal laws concern sanctions for performing work without a required license, certificate, or permit.

Civil law governs the rights and responsibilities of individuals and entities to one another. Civil liability is legal responsibility for the consequences of failing to satisfy obligations to another. Civil liability is not enforced by government prosecution, but rather by an individual or entity (the plaintiff), filing a lawsuit against someone else (the defendant), seeking compensation for a perceived wrong, often an injury or breach of contract. Although serious and potentially very costly, civil lawsuits are private disputes that do not result in criminal penalties. If the plaintiff wins, the court orders the defendant to pay damages to the plaintiff. The plaintiff and the defendant may also reach a compromise, called a settlement. Most civil lawsuits do not involve criminal acts, but victims can sue criminal offenders to recover the damages caused by a criminal act.

All of these components of the law affect one another, and they all affect emergency volunteers. Courts interpret constitutions, statutes, and regulations when deciding cases before them. Legislatures that do not like a court decision may pass a statute that could produce different results in future cases. Agencies revise regulations

to conform to new statutes or to comply with court decisions. Complete research of a legal issue looks at all these components of the law and how they interact.

B. Types of Liability

This section provides an overview of three types of liability in preparation for Chapter III's discussion of statutory protection for emergency volunteers. The three types of liability are: civil liability, injury benefits for emergency volunteers, and penalties for breach of licensing and certification requirements.

1. Civil liability

Any type of activity in which carelessness can cause injury or property damage is a potential source of liability for negligence. Motor vehicle operation, care of injured victims at the scene of an emergency, volunteer training and exercises, and volunteer screening and credentialing are activities that can cause liability concerns. An injury or damage does not result in civil liability unless there is a legal basis for holding someone responsible for that loss. There are four major types of civil liability:

- a) **Negligent acts or omissions**
- b) **Intentional acts**
- c) **Liability for the acts of others**
- d) **Strict liability**

These four types of civil liability are also referred to as tort liability. Civil liability law is largely based (although not entirely) on case law. Due to the unpredictable results of civil liability lawsuits, they are a major concern for emergency volunteers and their organizations.

- a) **Negligent acts or omissions.** Negligence is the failure to fulfill a duty to use ordinary care, which is the care that a reasonable person would use under similar circumstances. To prevail in a negligence lawsuit, a plaintiff must prove that:
 - The defendant had a duty to the plaintiff to use ordinary care.
 - The defendant breached (failed to fulfill) that duty to use ordinary care.
 - The defendant's failure to use ordinary care directly caused legally recoverable damages to the plaintiff.

A plaintiff who proves in court facts that support all of these elements of negligence can be awarded a judgment that requires the defendant to pay financial compensation to the plaintiff for the resulting damages. Damages can include compensation for property damage, lost income, medical expenses, and pain and suffering.

More severe forms of negligence include gross negligence, willful and wanton misconduct, and reckless disregard for others, which amount to failure to use any care at all. A lawsuit based on these more extreme behaviors can result in an award of additional damages (punitive damages) intended to punish the defendant, not just compensate the plaintiff.

The outcome of negligence lawsuits that go to trial—especially with a jury—can be unpredictable. A jury often has the authority—within broad limits—to decide what ordinary care was required of the defendant, based on the circumstances at the time of the incident. In theory, ordinary care at an active disaster site with many casualties should differ from ordinary care during a routine visit to a hospital emergency room, because the circumstances are not similar. Juries' awards of damages can also be unpredictable. The difficulty of predicting the outcome leads to the settlement of many negligence claims before they reach trial.

- b) **Intentional acts.** Civil liability claims can also arise from intentional acts. These include trespass, emotional distress, defamation, false imprisonment/unlawful restraint, assault, and battery. Claims based on intentional acts require the plaintiff to prove that the defendant intentionally committed a wrongful act, and may also require proof that the defendant intended to cause harm. Some intentional acts, such as assault and battery, can also be prosecuted as crimes.
- c) **Liability for the acts of others.** Individuals and organizations can also be legally responsible for the actions of someone they have the right to control; for example, an employer is usually liable for the job-related actions of its employee. Those who could be liable for the actions of an emergency volunteer include:
- An employer who loans its employee to an emergency preparedness or response effort, especially if that employer pays and retains control over the employee during deployment.
 - An organization that has the right to control the actions of an emergency volunteer in the field.
 - A facility that allows an emergency volunteer to provide emergency services on its premises (a common concern of healthcare facilities that provide a base of operation for volunteer healthcare providers after a disaster).

An organization may also be liable if it puts a volunteer in a position to harm someone; for example, failing to properly screen or train the volunteer or failing to terminate a volunteer who is incompetent could make an organization liable for the acts of that person.

- d) **Strict liability.** Strict liability is a legal responsibility for damages based on the nature of an activity, rather than on a negligent or intentional act. Strict liability has limited application to most emergency volunteers because it applies to injuries or damages arising from ultra-hazardous activities, such as using explosive materials. It is also the basis for many product liability laws, which impose liability for injuries caused by defective products. Workers' compensation, discussed in the next section, is another type of strict liability, because it does not require proof that a negligent act by the employer caused the

employee's injury. To prove a strict liability claim, the plaintiff must prove that the defendant was engaged in an activity that is subject to strict liability, and that the plaintiff suffered harm as a result.

2. Injury benefits for emergency volunteers

Most states require employers to provide workers' compensation benefits for their paid employees who are injured, contract a work-related illness, or are killed while on the job. The type and amount of benefits are established by law and are provided on a no fault basis: the employee does not have to prove that the employer was at fault to receive benefits, and the employee can usually receive benefits even if his or her carelessness caused or contributed to the injury. The goal of the workers' compensation system is to ensure that injured employees receive help without lengthy and costly litigation. In exchange for providing these benefits, the workers' compensation law normally protects the employer from civil liability for the injury.

Emergency volunteers often have no similar protection. Some states provide benefits for registered emergency volunteers, but those benefits are often limited. The lack of reliable benefits may be a barrier for potential emergency volunteers. It may also discourage employers from assigning their employees to work as emergency volunteers, because the employer's workers' compensation insurance could be responsible if the employee is injured. Injured emergency volunteers who do not receive workers' compensation benefits can file a civil liability lawsuit against the organization for which they were working, with a more unpredictable and potentially more costly outcome.

3. Penalties for breach of licensing and certification requirements

States control the quality of services rendered within their borders by requiring that professionals and trades people have a license or equivalent certification. These requirements affect a wide variety of professions, but of particular relevance in the emergency management context are healthcare professionals, architects, and engineers. Contractors are also important to emergency response and recovery efforts and their licensing/certification requirements are more variable, issued at the state or local level and sometimes both.¹

The government enforces licensing and certification requirements. The penalties for violation can be substantial, including criminal misdemeanor and felony charges. Consequently, these requirements are a potentially significant barrier to volunteerism, especially interstate mutual aid.

Conclusion

Although the legal system can seem inconsistent, its purpose is to establish societal standards of conduct and accountability for failure to meet those standards. Growing concern that this system deters volunteerism has led to federal and state legislative action to provide appropriate relief. The challenge is to strike the correct balance between maintaining standards of conduct and encouraging volunteerism. The specific statutes and regulations used to strike that balance differ from state to state.

References

1. In Florida, contractors' licenses may be issued by registration or certification. Registration means that the applicant has taken and passed a local competency examination and can practice only within that locale. Certification means that the applicant has taken and passed an examination and can practice throughout Florida. For more information, see: <http://www.myflorida.com/dbpr/pro/cilb/index.html> (accessed June 10, 2009). Fairfax County, Virginia requires Class C contractors to have a local Fairfax County Home Improvement Contractors license, in addition to meeting state requirements. For more information, see: <http://www.fairfaxcounty.gov/dpwes/navbar/faqs/contractorlic.htm> (accessed June 10, 2009).



III. Sources of Liability Protection

Liability protection and injury benefits for emergency volunteers are not uniform among the states, but there are some patterns. This chapter gives an overview of those patterns and provides examples of how states have addressed these issues. The discussion is presented for each of the types of liability identified: civil liability, injury benefits for emergency volunteers, and penalties for breach of licensing and certification requirements.

These patterns and examples will help users locate their own state's laws and understand how existing law might be improved.

A. Civil Liability

This section discusses four categories of volunteer civil liability protection and how they apply to emergency volunteers. It suggests an approach to evaluating the adequacy of existing protection and developing alternatives to improve it.

Whether—and to what extent—an emergency volunteer has civil liability depends on the law and the facts. The law generally describes what is required to prove a claim. For example, in a negligence claim, the law requires the plaintiff to prove that the defendant failed to use reasonable care. The plaintiff must then prove in court facts that support the finding as required by law.

The law also generally describes what is required for an emergency volunteer to have civil liability protection. State law varies as to the types of individuals and organizations that are covered (who), the activities that are covered (what), and the way protection is provided (how). The law is fixed, unless the state legislature or a court decision changes it, so the facts of each situation determine which protection, if any, is available to an emergency volunteer. By planning ahead and understanding its state law, a program can structure its procedures to take maximum advantage of existing legal protection.

The primary sources of civil liability protection for emergency volunteers are:

1. Volunteer protection acts
2. Good Samaritan laws
3. Emergency management and homeland security statutes; and governmental immunity laws and tort claims acts
4. EMAC and other mutual aid

Note: Risk management and risk financing, including insurance, is reviewed later.

It should be noted that these are general categories of protection: they are not all available in every state, and the scope can differ significantly from state to state. After finding the state statutes that may pertain to civil liability protection for emergency volunteers, the following questions are a useful starting point for evaluating how well a specific law protects emergency volunteers.

- **Who:** Are nongovernmental organizations (nonprofit and business entities) protected? In many states, individual emergency volunteers have some liability protection, but businesses or nonprofit entities that volunteer their human or physical resources in an emergency response effort are not protected.
- **What:** Are emergency volunteers protected when participating in training, drills, exercises, and other preparation for an emergency, including mass immunization efforts? Emergency volunteers are involved in many activities outside the scope of declared emergencies, for which they may have less liability protection.
- **What:** Are any activities in which emergency volunteers engage excluded from protection? Some important activities may be excluded, such as driving a motor vehicle or operating another type of vehicle.
- **How:** How is protection provided? Statutory immunity alone is not sufficient. If sued, the emergency volunteer will incur legal expenses to assert immunity in response to a lawsuit. The scope of the immunity may also leave the emergency volunteer unprotected in some situations. Better volunteer protection combines immunity and a commitment to pay legal defense costs and any judgment against the volunteer based on good faith acts within the volunteer's assigned duties.
- **How:** What kinds of liability are included in statutory protection? The language used affects the scope of the liability protection provided. Protection from civil liability, tort liability, or liability is broader than protection from liability for bodily injury, death, and property damage.

1. Volunteer protection acts

The federal Volunteer Protection Act of 1997 (VPA) was enacted by Congress to promote volunteerism by reducing individual volunteer's concerns about civil liability. Many states have statutes that provide similar relief, although the requirements and limitations significantly vary. The federal VPA provides useful protection to emergency volunteers who are not protected by a more specific state law. However, the VPA and most state volunteer protection acts were not designed specifically for emergency volunteers, so they can be less helpful than emergency management laws.

Immunity

Immunity is an exemption from a penalty, granted by law. In civil liability, it is an exemption from lawsuits for a category of valued activities. Civil liability immunity is available only for ordinary negligence, not for acts that are grossly negligent, amount to willful or wanton misconduct, or show reckless disregard for others.

Who is protected?

The federal VPA protects individual volunteers who are working without compensation and within their area of responsibility for a governmental entity or nonprofit organization. It does not protect:

- Volunteers for businesses, which includes many hospitals.
- Organizations of any type, including nonprofit or governmental organizations that use volunteers, or the organization's paid employees, who may train or supervise volunteers.

What activities are not protected?

The federal VPA does not protect volunteers from liability for:

- Acts that exceed ordinary negligence, such as gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of others.
- The operation of a motor or other vehicle for which the state requires an operator's license or insurance.
- Acts for which the volunteer was not appropriately licensed, if a license was required.
- Violent acts, hate crimes, sexual offenses, civil rights violations, or any act committed by the volunteer under the influence of alcohol or a drug.

How is protection provided?

The federal VPA provides limited immunity from ordinary negligence to protected volunteers and limits a plaintiff's right to recover punitive damages from a protected volunteer. It does not provide for payment of defense costs or payment of a judgment or settlement. It does not prevent the organization or entity for which the volunteer works from suing the volunteer.

Example of a state VPA that protects emergency volunteers:

- In North Carolina's VPA, emergency services workers are protected for emergency services activities, including emergency preparedness.¹ North Carolina

How states can modify the VPA

The federal VPA permits a state to:

- Provide additional protection for volunteers.
- Condition limitation of liability on the nonprofit organization or governmental entity providing there is a financially secure source of recovery (such as insurance or a self-insurance program) for individuals who are harmed by their volunteer.
- Decide not to apply the federal VPA in a lawsuit in which all parties are citizens of that state.
- Condition protection for the nonprofit organization or governmental entity using risk management procedures, including mandatory training of volunteers.
- Require the nonprofit organization or governmental entity to be liable for the acts or omissions of its volunteers, as it would be for its employees.
- Make the limitation of liability inapplicable to civil actions brought by an officer of a state or local government under state or local law.

specifically protects Medical Reserve Corps units (MRCs), Community Emergency Response Teams (CERTs) and other functions related to civilian protection, including the administration of state and federal disaster recovery and assistance programs.²

2. Good Samaritan laws

Good Samaritan law is the popular name for statutes that protect individuals who help a person who is experiencing an emergency in a setting where that person does not have ready access to professional care or assistance.³ Good Samaritan laws are a potential source of protection for emergency volunteers who are near an event and respond to help victims, because protection does not depend on formal activation as part of an emergency response force. Every state offers some form of Good Samaritan protection, but who is eligible for protection varies.⁴

The term Good Samaritan is sometimes used in connection with more limited purpose protection as well. For example, in 1996, Congress passed a law that offers limited liability protection to donors of food and to the nonprofit organizations that distribute that food. This law is referred to as the Bill Emerson Good Samaritan Food Donation Act. Many states have adopted similar laws. Good Samaritan law can also be used broadly to refer to almost any kind of liability protection provided to volunteers in an emergency setting. In this manual, we are using Good Samaritan law to describe statutes that offer limited immunity protection but are not part of an official emergency management or homeland security law.

Who is protected?

Generally, individuals who, in good faith, without a duty to do so, and without compensation, assist someone who is experiencing an emergency in a setting where that person does not have ready access to professional care or assistance are protected. Some states protect only people with healthcare or first aid training. Others protect paid members of a government or nonprofit emergency medical unit. Still others protect any person rendering aid, without regard to training.

What activities are protected?

Often Good Samaritan laws only protect people who provide care at the immediate scene of the emergency. Thus, emergency volunteers providing assistance at a site away from the immediate scene, for example, at a hospital, might not be protected.

Inclusive Good Samaritan language

Nevada Revised Statute §41.500: “Except as otherwise provided in NRS 41.505, **any person** in this state who renders emergency care or assistance in an emergency, gratuitously and in good faith, is not liable for any civil damages as a result of any act or omissions, not amounting to gross negligence, by him in rendering the emergency care or assistance or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured person.”

(Emphasis added.)

How is protection provided?

Good Samaritan laws provide limited immunity from civil liability for ordinary negligence to protected volunteers, as described above. They do not provide for payment of defense costs or payment of a judgment or settlement.

Some states are expanding their Good Samaritan laws to provide protection in community emergencies. For example, in 2004, the Florida Legislature amended the Florida Good Samaritan statute to protect any person who participates in emergency response activities under the direction of or in connection with a community emergency response team, a local emergency management agency, the Division of Emergency Management, or FEMA. (See the text box on the Florida Good Samaritan Act for the exact language of the statute.)⁵

Florida's effort to expand Good Samaritan protection has two limitations:

First, it requires that the protected person be working “under the direction of or in connection with” one of four listed emergency response efforts, but how this connection is established is unclear in the statute.

Second, this statute only protects someone who has acted “as a reasonably prudent person would have acted under the same or similar circumstances.” Thus, it is unclear whether the statute protects someone who commits ordinary negligence by failing to act as a “reasonably prudent person.”

Florida Good Samaritan Act

Fla. Stat. §768.13(2)(d)

“Any person whose acts or omissions are not otherwise covered by this section and who participates in emergency response activities **under the direction of or in connection with a community emergency response team**, local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency is not liable for any civil damages as a result of care, treatment, or services provided gratuitously in such capacity and resulting from any act or failure to act in such capacity in providing or arranging further care, treatment, or services, **if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.**” (*Emphasis added.*)

Nationwide Effort to Extend Liability Protection
Public/Private Legal Preparedness Initiative

The University of North Carolina at Chapel Hill Gillings School of Global Public Health is currently engaged in an effort to eliminate the legal barriers that hinder collaboration between the private, nonprofit, and public sectors. A major objective of the project is to extend liability protection to business and nonprofit entities assisting in community emergencies. The project has developed a template for expanded legislation, and has ongoing pilot state coalition efforts in Georgia and North Carolina to support the extension of liability protection in these states.

The four template elements are:

- Extend liability protection to cover business and nonprofit entities acting in good faith during an emergency.
- Coverage would be triggered by the Governor's emergency declaration.
- Coverage would apply only to emergency activities conducted in coordination with the state.
- Coverage would also include pre-event planning and training activities that take place prior to the declared emergency.

The project website is <http://nciph.sph.unc.edu/law/>, which includes a news section on recent developments in this field from around the country.

3. Emergency management and homeland security statutes; and governmental immunity laws and tort claims acts

- As emergency management practices have evolved to recognize the value of organizing, registering, and training groups of volunteers prior to an emergency, the Good Samaritan concept of liability protection has also evolved. In some states, emergency volunteers now have statutory liability protection more tailored for their activities:
- Emergency volunteers may be included in protection provided under special emergency management or homeland security statutes.
- Emergency volunteers may share in the rights and immunities provided to government employees performing similar work under governmental immunity and tort claims acts.
- Emergency volunteers may have immunity under professional practice and other statutes.

The who, what, and how of this protection varies from state to state.

Who is protected?

Commonly, emergency volunteer civil liability protection is limited to uncompensated individual volunteers who are registered with, and operate under the control of, a government agency or a recognized emergency response organization. Emergency management statutes often protect volunteers by recognizing them as emergency workers or disaster workers, categories that include more than emergency volunteers.

Less often, these laws will specifically protect:

- Volunteers with certain named groups, such as MRC and CERT.
- Nongovernmental organizations.
- Individuals or organizations responsible for an emergency volunteer's actions.

A number of states have adopted statutes that protect:

- Architects and engineers who volunteer their services after a disaster.
- Individuals (and occasionally organizations) that permit the use of their real property (and occasionally personal property) for emergency preparedness or shelter, usually but not always without compensation.

The key to protecting emergency volunteers is to be certain they meet all the statutory requirements for the protected group.⁶

Examples of statutory provisions addressing who is protected:

- **Statutory requirements for emergency volunteer protection.** To be protected under Washington's emergency management law, an emergency volunteer must be:
 - Registered with a local emergency management agency or the state military department.
 - Holder of an identification card for the purpose of engaging in authorized emergency management activities.
 - Not receiving or expecting compensation as an emergency worker from the state or local government.
 - Acting within the scope of assigned duties while engaged in a covered activity.
 - Working under the direction of an approved agency.⁷
- **Protection of people and entities that might be liable for an emergency volunteer.** Effective July 22, 2007, Washington extended immunity to others who might be liable for a covered emergency volunteer's activities, including his or her employer and supervisors, any facility or their officers or employees, the owner of the property or vehicle where the volunteer's act or omission occurred, any local organization that registered the volunteer, and the state or any state or local governmental entity.⁸

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- **Entity protection in public health disasters.** In 2007, Iowa added to its public health law a section that gives immunity to individuals and nongovernmental organizations that provide assistance in a public health disaster.⁹
 - **Entity protection when complying with the emergency management statute.** The Alabama Emergency Management Act of 1955 gives immunity to any emergency management worker, individual, partnership, association, or corporation complying with the emergency management statute, or any associated order, rule or regulation, or precautionary measures taken by a local government.¹⁰
 - **Architects and engineers.** Volunteer architects and engineers who assist in an emergency response effort have immunity from liability under a number of state statutes, reflecting a successful advocacy campaign by their professional groups. Kansas is an example of a state that provides limited immunity to licensed architects or professional engineers who volunteer their services after a disaster.¹¹ Immunity in these statutes is often limited to volunteer services provided at the request of public officials within a specified time after a declared disaster.
 - **Effect of compensation.** Many states protect only uncompensated volunteers, but a few states also protect organizations that are compensated for their emergency activities. Delaware’s emergency management statute provides immunity for corporations or entities that perform work or furnish material pursuant to a contract with the state, a political subdivision, or an agency and in response to an emergency declaration or in an effort to comply with the emergency management statute. This statute does not require that a protected entity be uncompensated, and expedites the emergency procurement process by permitting oral contracts.¹²
 - **MRC and CERT Volunteers.** Virginia’s emergency services and disaster law extends governmental immunity to MRC and CERT members engaged in emergency services.¹³

What activities are protected?

Some states limit liability protection to declared emergencies. Others include preparedness activities, training, drills, or exercises. Some statutes provide protection for specific activities.

Examples of statutory provisions describing protected activities:

- **Broad definition of covered activities.** Washington’s emergency management statute broadly defines covered activities to include assistance or transportation authorized by the state military department during an event, at the scene of the event, and in other locations, and participation in training or exercises authorized by the department in preparation for an event.¹⁴
- **Protection during the development of response capabilities.** Arizona protects emergency volunteers engaged in preparedness, response, recovery, and mitigation activities, or in training for authorized functions. Preparedness activities include actions taken to develop the response capabilities needed for an emergency.¹⁵
- **Building and infrastructure safety.** Kansas protects licensed architects and professional engineers who voluntarily, without compensation, and at the request of a public official, public safety officer, or city or

county building inspector, provide structural inspection services at the scene of a declared emergency caused by a natural disaster.¹⁶ Georgia goes beyond architects and engineers, giving immunity to any person who voluntarily and without compensation provides services in a declared emergency to prevent, minimize, and repair injury and damage to property resulting from catastrophic acts of nature.¹⁷

- **Permitting use of privately owned property in an emergency.** North Carolina’s emergency management law protects from civil liability any person, firm, or corporation that either knowingly or unknowingly, voluntarily or involuntarily, and with or without compensation, permits the use of real or personal property it owns or controls for the purpose of sheltering, protecting, safeguarding, or aiding people.¹⁸ This is broader than many states’ protection, which is often limited to individuals donating the use of real property without compensation.
- **Administration of state and federal disaster programs included in the scope of immunity.** Virginia defines emergency services broadly, to include preparing for and carrying out a wide range of activities to prevent, minimize, and repair injury and damage resulting from natural or manmade disasters, including administering approved state and federal disaster recovery and assistance programs.¹⁹

How is protection provided?

Some states give emergency volunteers the same governmental immunity provided to government employees performing similar functions. Others provide separate immunity for emergency volunteers. Some statutes also provide emergency volunteers a legal defense and pay the cost of liability coverage, or permit or require their agencies and local governments to do so.

Examples of how statutes protect emergency volunteers:

- **Liability insurance as an optional benefit for volunteers.** In addition to the immunity provided by Virginia’s emergency services and disaster law, the Virginia State Government Volunteers Act authorizes, but does not require, agencies or political subdivisions using volunteers (including emergency volunteers) to provide liability insurance as a benefit.²⁰
- **Mandatory liability coverage and legal defense.** Arizona gives its emergency workers (which includes volunteers) immunity, and also requires that any Arizona government entity using emergency workers provide liability coverage, including legal defense, of an emergency worker acting within the course and scope of assigned duties and in an authorized activity, except for actions of willful misconduct, gross negligence, or bad faith.²¹

3. EMAC and other mutual aid

Local governments for adjoining communities often have mutual aid agreements that describe how they will help a party to the agreement whose resources are insufficient to manage an event. An interstate mutual aid compact addresses the same need, but on a larger scale, by establishing the terms and conditions under which states will assist each other in an emergency.

EMAC is the most widely known interstate mutual aid compact.²² EMAC was ratified by Congress in 1996; and the legislatures of all 50 states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia have adopted EMAC.²³ The discussion in this manual focuses on EMAC because of its broad reach.

Who is protected?

One important EMAC issue is liability. The assumption underlying the EMAC language is that states will render aid using their own employees and resources. Consequently, EMAC protects the state rendering aid and its officers and employees,²⁴ but does not explicitly protect local governments or their employees, volunteers, businesses, and nonprofit entities, all of which are potential sources of assistance in a major disaster. Volunteers or organizations that self-deploy to another state in a disaster are not protected by EMAC.

A state can—if it chooses to—include these omitted parties in its emergency forces and in EMAC liability protection by establishing a temporary employment relationship. The goal is to establish a relationship that will be recognized as employment under the law of the state rendering aid. The mechanism for establishing this relationship will not be the same in every state. State-specific legal advice is critical to developing an approach that works.

Examples of approaches to including emergency volunteers and local government employees under EMAC liability protection:

- **Intrastate mutual aid agreements.** EMAC’s website suggests that intrastate mutual aid agreements can allow states to designate local government employees as state assets for purposes of an EMAC response in another state. EMAC’s 2004 Model Intrastate Mutual Aid Legislation and examples of intrastate mutual aid agreements adopted by several states are provided on EMAC’s website at <http://www.emacweb.org/?150>.

EMAC Article VI—Liability

“Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this 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. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.” *(Emphasis added.)*

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- **Contracts.** In states where there is no intrastate mutual aid agreement, EMAC suggests using contracts to incorporate local government assets into an EMAC response. EMAC’s website provides several examples of contracts that have been developed by different states for the purpose of mobilizing local government employees under EMAC, which are accessible on EMAC’s Model State-County Mutual Aid Deployment Contract page, at <http://www.emacweb.org/?437>. These examples were prepared for local government employees, but contracts or memoranda of understanding (MOU) that designate volunteers as temporary state employees are one possible way to incorporate volunteers into an EMAC response. No contract or MOU should be developed or signed without competent legal advice.
 - **State legislation.** A third approach is legislation that designates participants in an EMAC response as state employees for the purposes of EMAC. Indiana takes this approach for members of its mobile support units, which are groups of individuals that can be deployed to respond to emergencies inside or outside Indiana.²⁵ Members of mobile support units do not have to be employed by the state or a local government: people who are retired, unemployed, or employed by a business are all eligible. To bring these diverse groups under EMAC protection, the Indiana statute provides that when a mobile support unit is deployed outside Indiana under EMAC, members of the unit who are not state employees are considered to be state employees for the purposes of EMAC.

What activities are protected?

EMAC protects acts or omissions in good faith while rendering aid in another state, and the maintenance or use of any equipment or supplies in connection with that aid. EMAC provides that a responding state’s emergency forces “continue under the command and control of their regular leaders, but the organizational units...come under the operational control of the emergency services authorities of the state receiving assistance.” Thus, a response team is not protected for activities outside of its approved mission.

How is protection provided?

EMAC protection is a combination of immunity and assumption of responsibility by the state receiving aid for tort liability caused by the emergency forces of a state that renders aid.

Examples of other mutual aid protection:

EMAC’s liability protection applies only when the government of a participating state provides aid in response to a disaster declared by the governor of another participating state. Thus, some interstate assistance is not protected under EMAC. Other potential sources of liability protection for emergency volunteers who provide disaster assistance in another state include:

- **State liability protection.** The laws of the state where the disaster and the emergency response take place may protect out-of-state emergency workers. For example, Alabama gives immunity from liability for bodily injury, death, or property damage to emergency management workers who are attempting to comply with its emergency management statute. Emergency management worker is defined broadly, and

includes volunteers and employees of an agency or an organization that is performing emergency management services in Alabama subject to the control, or at the request, of the state, county, or local government.²⁶

- **Other interstate emergency compacts.** The state may be party to national or regional interstate emergency compacts other than EMAC. The Interstate Civil Defense and Disaster Compact is still law in some states, although it has been superseded by EMAC in others. It includes liability language similar to EMAC. The Pacific Northwest Emergency Management Arrangement was approved by resolution of Congress in 1998.²⁷ Its members at the time of approval were Alaska, Idaho, Oregon, and Washington, and the Canadian Province of British Columbia and the Yukon Territory. The 1998 version approved by Congress does not refer to liability protection.
- **Interstate mutual aid agreements.** Local governments may have entered into mutual aid agreements with nearby jurisdictions that are across state lines. Such local agreements cannot change state law, but can provide a contractual basis for the jurisdiction receiving assistance to protect the jurisdiction providing assistance.

B. Evaluating Injury and Illness Protection for Emergency Volunteers

This section discusses issues to consider when evaluating existing injury and illness protection for emergency volunteers and how to improve it. Workers' compensation and other emergency volunteer injury programs differ as to whom they cover, the injuries and illnesses they will cover, and the benefits they provide.²⁸ As with civil liability protection, a program that understands its state law can take maximum advantage of existing legal protection.

Who is covered?

The definition of employee in the workers' compensation statute is the first hurdle to protection. Emergency volunteers are sometimes included in a workers' compensation statute's definition of employee. Often they are not, but emergency management and homeland security statutes may fill this gap for emergency volunteers in a number of different ways. The first issue is whether emergency volunteers qualify for injury benefits from either source. The second issue is what requirements an emergency volunteer must meet to be covered.

Examples of state requirements for coverage of emergency volunteers under workers' compensation:

Most states that provide workers' compensation benefits to emergency volunteers require prior affiliation with an emergency services organization.

- **Workers' compensation statute.** Under Kentucky's workers' compensation statute, regularly enrolled volunteer members or trainees of statewide and local emergency management agencies are deemed to be employees of the state.²⁹

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- **Emergency management statute.** Arizona’s emergency management statute provides registered emergency workers, including volunteers, who are performing authorized functions or training for those functions “the same...disability workers' compensation benefits as officers, agents, and employees of the state and its political subdivisions performing similar work.”³⁰

What activities are protected?

Generally, workers’ compensation covers injuries, illnesses, and deaths sustained while performing activities within the scope and course of the employee’s job. For emergency volunteers, the key issues are:

- What activities are included in the emergency volunteer’s job? (Don’t forget training, exercises, and drills for the emergency volunteer’s primary functions.)
- Does the statute limit the circumstances in which injury/illness benefits are available to emergency volunteers? (Are benefits available for all the activities in which emergency volunteers engage, or are they limited to activities during a response to a declared emergency?)

Examples of activities for which emergency volunteers have injury protection:

- **Broad definition of included functions.** Arizona provides disability benefits to emergency workers (including volunteers) engaged in emergency functions, which include warning and communications services, relocation of persons from stricken areas, radiological defense, temporary restoration of utilities, plant protection, transportation, welfare, public works and engineering, search and rescue, health and medical services, law enforcement, fire fighting, mass care, resource support, urban search and rescue, hazardous materials, food and energy information and planning, and other related activities.³¹
- **Approved programs.** In Virginia, where emergency volunteer injury benefits are optional for political subdivisions, the administration of approved state and federal disaster recovery and assistance programs is included in its definition of emergency services.³²
- **Deployment of emergency volunteers to another state.** EMAC provides that each state compensates injured members of its own emergency forces as though they were deployed in their own state. Thus, emergency volunteers deployed under EMAC as part of their state’s response team look to their own states’ laws for benefits.

How is protection provided?

Generally, the protection would include a set of benefits that compensates the emergency volunteer for lost income, medical expenses, and permanent disability. However, the benefits provided, and the responsibility to provide them, varies greatly. Key issues include:

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- What benefits are provided and are they subject to contingencies, for example, the lack of benefits from another source, such as a regular employer?
 - Are emergency volunteers entitled to benefits as though they are state or local government employees, or are separate more limited programs established for them?
 - Are the benefits mandatory, or are they optional or contingent?

Examples of emergency volunteer injury benefit programs:

- **Benefits provided as though a state employee, in absence of other benefits.**

Emergency volunteers' benefits are often secondary to benefits from other sources, for example from their regular employer. Rhode Island's emergency management statute provides benefits to disaster response workers who are injured, killed, or disabled while in training for or on disaster response duty as though they were state employees, in the absence of other benefits.³³

- **Benefits provided under a separately funded program, in absence of other benefits and contingent on funding.** Washington's emergency management statute establishes a separate compensation program for emergency workers registered with approved local emergency management organizations, but adopts the Washington workers' compensation statutory benefits, subject to specific limitations in the emergency management statute. Funds to pay these benefits must be specially appropriated by the Washington legislature, and benefits are offset by benefits payable from other programs.³⁴

- **Benefits more limited than regular workers' compensation benefits.**

Emergency volunteers may not receive the same benefits provided under regular workers' compensation. Indiana's emergency management law provides authorized emergency volunteers with medical treatment and burial expense benefits under Indiana's workers' compensation and occupational diseases laws, but does not mention disability or lost income benefits.³⁵

- **Benefits optional.** Some states allow, but do not require, political subdivisions that use emergency volunteers to provide these volunteers with workers' compensation coverage. Virginia's workers' compensation act permits, but does not require, its political subdivisions to treat their CERT and MRC team members as employees for purposes of workers' compensation benefits.³⁶

C. Penalties for Breach of Licensing and Certification Requirements

Professional licenses, certificates, and permits are state law matters. Healthcare providers,³⁷ architects, and engineers are generally required to have a license issued by each state where they practice their profession. There are similar requirements for construction and mechanical trades, which restrict their operations across state lines and sometimes prevent them from working in other locations in the same state. Licensing requirements can also prevent retired professionals whose licenses have lapsed from volunteering within their own state. Obtaining a license, certificate, or permit in another jurisdiction through the regular process is often time consuming and may be a barrier to providing assistance in an emergency.

License, certificate, and permit issues do not only affect volunteers. They also affect emergency workers who are paid for services performed in another state. Violation of a law that requires a license, certificate, or permit can be a criminal offense. Emergency workers, including volunteers, and their organizations must be certain before deployment that workers' licenses, certificates, or permits will be recognized in the state where they will work, or that they are legally permitted to work there in an emergency.

States recognize that they will need supplementary workers in a major emergency. Thus, many state emergency management statutes modify enforcement of license, certificate, and permit requirements during emergencies. The modification is usually subject to conditions and limitations.

EMAC is also a source of protection for participants in a state EMAC response. EMAC provides that:

“Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.”

Self-deployment and deployment in small groups without affiliation increases the risk of violating a license, certificate, or permit requirement. Emergency workers, including volunteers, are less likely to incur criminal penalties if they deploy into another state with an organization that has reliable information about state requirements and protections for both states.

Who is covered?

Statutory protection usually covers emergency workers who provide necessary skills in an emergency response, without having a current license, certificate, or permit issued by the state where they will work.

Examples of state requirements for protection:

- Minnesota specifically requires emergency workers to hold a license, certificate, or other permit issued by a state of the United States, the District of Columbia, or a province of Canada for the skills with which they will render aid in response to a request of the governor. The governor may place limitations and conditions on the force and effect of the license.³⁸
- Indiana's emergency management act states that the requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who practices that skill while performing duties as an emergency management worker during a disaster emergency.³⁹

What activities are protected?

The scope of activities permitted depends on the law of the state where emergency services will be performed. Emergency volunteers licensed and working in their own state can perform the activities they normally perform, within the limits imposed by the situation and the program with which they are working. The scope of activities that can be performed in another state depends on the activities usually permitted by law in that state, the limits of the program with which the volunteer is working, and additional limitations imposed by the state.

Example of activities permitted beyond scope of license:

- Michigan’s emergency management act includes an unusual provision that permits certain non-physician licensed healthcare providers to perform minor medical procedures that would normally be outside the scope of their license under the supervision of a member of the medical staff of a licensed hospital.⁴⁰

How is protection provided?

EMAC and many states require emergency volunteers to have a valid license, certificate, or permit in another state. (See Minnesota, above, under “Who is covered?”) Other states suspend the requirement for a license, certificate, or permit during an emergency (see Indiana, above, under “Who is covered?”), but it is likely that credentials are checked during the registration and screening process. Few states presently issue a volunteer license that specifically permits retired healthcare workers who have not maintained their license to use their skills in an emergency or disaster.

Examples of how state protection is provided to retired healthcare providers:

- Wisconsin’s public health law permits healthcare providers who have held a valid license or certification in good standing within the last ten years to act as unpaid healthcare volunteers on behalf of a healthcare facility or mass clinic during a declared state of emergency.⁴¹
- Washington has adopted a retired volunteer medical worker license for workers who held an active license no more than ten years before applying for the retired volunteer license, have no current restrictions based on violations, and have registered as a volunteer with a local organization for emergency services or management.⁴²

References

1. North Carolina General Statutes §1-539.10.
2. North Carolina General Statutes §1-539.11.

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3. A good example is Nevada Revised Statute §41.500(1).
 4. A good beginning point for identifying Good Samaritan laws and other laws that provide liability protection to volunteers in a specific state is the table in Appendix D to the *Emergency System for Advance Registration of Volunteer Health Professionals: Legal and Regulatory Issues*, draft dated May 2006, which is available free online at:
<http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf> (accessed June 10, 2009). This report was prepared by the Centers for Law and the Public's Health at Georgetown and Johns Hopkins universities in partnership with the U.S. Health Resources and Services Administration.
 5. Florida Statutes Title XLV §768.13(2)(d).
 6. For a summary of these requirements, see Appendix D to the *Emergency System for Advance Registration of Volunteer Health Professionals: Legal and Regulatory Issues*, draft dated May 2006, online at:
<http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf> (accessed June 10, 2009).
 7. Revised Code of Washington §§38.52.010(4) and 38.52.180.
 8. Revised Code of Washington §38.52.180.
 9. Iowa Code §135.147.
 10. Alabama Code §31-9-16.
 11. Kansas Statutes Annotated §60-4201.
 12. Delaware Code, Title 20, Chapter 31, Subchapter IV, §3129.
 13. Virginia Code §44-146.23.
 14. Revised Code of Washington §38.52.180.
 15. Arizona Revised Statutes §§26-314C and 26-301.
 16. Kansas Statutes Annotated §60-4201.
 17. Official Code of Georgia Annotated §51-1-29.2.
 18. North Carolina Code Chapter 166A §166A15.
 19. Virginia Code §44-146.16.
 20. Virginia Code §§2.2-3601–2.2-3605.

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21. Arizona Revised Statutes §26-314C and ARS §26-301.
 22. EMAC is administered by the National Emergency Management Association. Its website is: <http://www.emacweb.org/>.
 23. The model EMAC legislative language is on the EMAC website at: <http://www.emacweb.org/?13>.
 24. The "officers and employees" language is also used in Article 5 of the 1950s-era Interstate Civil Defense and Disaster Compact, which has been repealed in some states, but remains on the books in others.
 25. Indiana Code Annotated §10-14-3-19.
 26. Alabama Code §31-9-16.
 27. P.L. 105-381.
 28. See the excellent discussion of workers' compensation for emergency volunteers in the *Emergency System for Advance Registration of Volunteer Health Professionals: Legal and Regulatory Issues*, draft dated May 2006, online at: <http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf> (accessed June 10, 2009). Appendix E to that report is a summary of how each state's workers' compensation law applies to emergency workers as of May 2006.
 29. Kentucky Revised Statutes §342.640.
 30. Arizona Revised Statutes §§26-314 and 26-301.
 31. Arizona Revised Statutes §26-301.
 32. Virginia Code §65.2-101.
 33. Rhode Island General Laws Title 30, Chapter 30, §30-15-15.
 34. Revised Code of Washington §§38.52.260, 38.52.280, and 38.52.340.
 35. Indiana Code Annotated §10-14-3-15(c).
 36. Virginia Code §65.2-101, in the definition of *employee*.
 37. This is a special concern for the healthcare practitioner community, and a thorough discussion is beyond the scope of this book. For a more detailed discussion, see *Emergency System for Advance Registration of Volunteer Health Professionals: Legal and Regulatory Issues*, draft dated May 2006, online at: <http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf> (accessed June 10, 2009).
 38. Minnesota Statutes Annotated §12.42.

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39. Indiana Code Annotated §10-14-3-15.
 40. Michigan Compiled Laws §30.411.
 41. Wisconsin Statutes Annotated §250.042.
 42. Revised Code of Washington §18.130.360.

IV. Risk Management

All activities involve risk, such as the possibility of personal injury, property damage, or loss of income. Thus, we must prepare for risk in order to achieve the best possible outcome. This process is risk management, which involves identifying, analyzing, and controlling the effects of risk.

Risk management requires planning, but it does not have to be a separate program. It basically consists of good management practices. Most Citizen Corps Councils and Partner Programs can address risk related to emergency volunteer activities by taking a few simple steps.

A. How Does Risk Affect Programs and Volunteers?

Some organizations view risk as a purely negative force, rather than as an inevitable part of human activity and progress. New activities are avoided as risky, even when their benefits are significant. Risk cannot be completely avoided, however, because all activities, especially innovative programs such as Citizen Corps, include some degree of uncertainty. Unfortunately, avoiding risk often means abandoning an otherwise beneficial activity. Hence, the CCVLG focuses on managing risk rather than avoiding it.

Citizen Corps activities take place both in controlled environments, such as classrooms, and in less predictable environments, such as emergency exercises or emergency response. Unexpected outcomes can occur in either setting, but the risk increases outside the classroom. Some of the possible negative consequences are:

- Injuries, illnesses, and death
- Property damage
- Claims and lawsuits with resulting settlements and judgments
- Increased insurance premiums
- Loss of valued volunteers or employees
- Indirect losses, including loss of the trust, confidence, and support of the public, government, partners, or volunteers, and failure to achieve the program's mission

Risk management is the best tool for addressing uncertainty. Statutory immunity, statutory liability protection, workers' compensation benefits, and insurance only provide partial protection. They do not protect against liability from some types of losses. More importantly, they do not eliminate losses, they only shift who bears those losses. If a volunteer injures a member of the public, the losses affect society, even if the volunteer cannot be sued. Risk management is a more effective approach because it can actually eliminate many losses entirely.

B. How Does a Council or Program Identify Possible Risk Events and Establish Priorities?

1. Identifying how risk can affect a Council or program

Risk identification and analysis is the process of determining how risk can affect a Council's or volunteer program's goals or activities. This includes not only what risk events can occur, but also what consequences those events can produce. The goal of risk identification and analysis is to set risk management priorities.

The risks faced by a Council or volunteer program depend on its activities. MRC units face specific risks from their use of volunteer licensed healthcare providers. Other risks, for example, from the operation of motor vehicles, may be more universal. Identifying and analyzing how risk can affect your Council or volunteer program can be as simple as asking the following two questions¹ for each key program activity:

(1) What can go wrong, and (2) if it does go wrong, what are the consequences?

The answers to these questions establish a basis to determine potential threats to the Council, a volunteer program, the volunteers, and the public, and to decide what action to take.

It can be difficult to imagine what might go wrong if it hasn't gone wrong before. The most common concerns are an injury, illness, or death, but unexpected outcomes can also include claims of discrimination, civil rights violations, breach of privacy or confidentiality (especially in healthcare settings), and an inability to use (or legal sanctions against) professional volunteers due to licensure restrictions. As a good starting point, program managers can ask the following questions:

- Are trainings, exercises, or response sites safe and free from dangerous conditions?
- Do volunteers understand potential dangers and how to avoid dangers or operate safely in their presence?
- Do volunteers have adequate personal protective equipment for tasks they will be asked to perform (adequate in both quantity and/or suitability for the purpose?)
- Do volunteers understand and respect the limits of their assignments or authority?
- Will volunteers operate machinery or vehicles (e.g., motor vehicles, water craft, or aircraft)?
- Have volunteers been screened to exclude applicants who have a criminal history, or possible criminal intent, including predators?
- Have volunteers' qualifications for the work assignment been checked, especially volunteers who seek to provide professional or mechanical services that require licensure, credentials, or special skills?
- Is equipment regularly checked, and has defective equipment been removed from service?
- Are volunteers adequately supervised?

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- Are procedures for documenting volunteer activation, deactivation, and activity clear, in writing, and consistently followed?
 - Does the program have reliable resources for support and funding?
 - Does the program review all MOUs with other organizations to ensure that the program is not required to maintain insurance it does not have, or to indemnify and hold harmless the other organization for losses?
 - Are sufficient procedures in place to ensure that the above practices are followed?

While no list like this is comprehensive or applicable to every program, it is a useful place to start. A list like this can be used in a brainstorming meeting with a group of knowledgeable representatives from different parts of the program.

2. Establishing priorities

If something does go wrong, what are the consequences? The answer to this question helps the program set its risk management priorities, which are the basis for its risk management plan. A program can maximize its benefit from limited risk management resources by first addressing the risks with the greatest potential consequences.

- a) **Cost factors—frequency and severity.** One way to estimate the consequences of a risk event is to look at the projected financial cost for that type of event as determined by two factors:
- How often is the event expected to occur (frequency)?
 - What is the expected cost of each such event (severity)?

Both of these factors are important. An event that is likely to occur frequently but produce small losses each time may impose a total financial cost equal to an event that is unlikely to occur, but will produce large losses. Based on these estimates, the program can set priorities and develop plans for controlling risk.

- b) **Non-cost factors.** The projected financial cost of a certain type of risk event is only one factor to consider in setting risk priorities. Compliance with legal requirements, maintaining a positive public image, moral considerations, and maintaining the confidence of, and good relationships with, other organizations, local governments, and agencies are also important. For example:
- To avoid prosecution of healthcare professional volunteers or hosting facilities, a program may adopt procedures for confirming and documenting in advance that volunteers have the required licenses.
 - To avoid damage to its public image and its relationships with key partners, a program may adopt training and procedures to ensure that it and its volunteers do not violate civil rights laws, including laws against discrimination.

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- To uphold its moral standards and achieve its mission, as well as avoid financial losses, a program may prioritize the control of risk events that could cause injury, illness, or death of volunteers or members of the public.

Non-cost factors can be just as important as cost factors. Adverse publicity and negative public and partner perception of the program are just as harmful as paying damages in a lawsuit. The program's risk priorities must consider them on an equal basis.

C. Controlling the Effects of Risk³

After a program identifies possible risk events and establishes priorities, the next step is what to do about it: controlling the effects of risk. The goal of risk control, as it is often called, is similar to that of disaster mitigation. Neither risk nor disasters can actually be controlled, but with foresight and preparation, their adverse consequences can be reduced. Risk control practices achieve their aims by reducing the frequency of risk events and the severity of their adverse consequences. These risk control practices are not unique. They are also recognizable as good management practices.

From the recruiting plan to post-response activities, all interactions with volunteers and other organizations are opportunities to optimize volunteers' experiences and manage the risks inherent in the program's mission. Volunteer risk management activities fall into three basic categories:

- Selecting volunteers
- Preparing volunteers for their roles and protecting their safety
- Managing volunteers

Policies and procedures for conducting each of these activities will help the Council or program control the effects of risk arising from its use of volunteers. The key is to be consistent in each of these activities. The following is a starting point for Citizen Corps Councils and programs to develop their own individualized approaches.

1. Selecting volunteers

A selection process helps to ensure that the program knows the skills it needs and selects the right volunteer for the position. Job descriptions are the foundation for selection, because they require the program to carefully consider its needs. Thorough screening helps the program avoid putting an unqualified person or someone with a criminal background in a position to do harm.

- a) Position descriptions.** Position descriptions are required to ensure that volunteers, their trainers, and their supervisors know the volunteers' responsibilities and the limits of their authority. For each position or volunteer role, develop a written description with as much detail as possible, to include:

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- Title
 - Purpose of the position
 - Location (if known)
 - Key responsibilities
 - Sample tasks or activities
 - Who the volunteer reports to
 - Length of appointment or time commitment, if known or applicable. (It is important to make any volunteer appointment terminable at any time at the will of the program.)
 - Required qualifications (including professional credentials and any program-specific required training)
 - Support provided (what the volunteer can expect from the organization)

b) Volunteer application. Develop and consistently use a standardized and non-discriminatory volunteer application form that does not promise the volunteer will be accepted.

c) Volunteer selection and screening. Develop and consistently use written volunteer screening policies and procedures, and make volunteer acceptance and placement decisions based on these policies. Include a combination of the following screening methods (or other appropriate methods) using care to keep the prospective volunteer fully informed of the process and to obtain written permission of the prospective volunteer when required by law:

- Application review for responses to all required questions
- Interviews (with standardized questions based on the position description)
- Reference checks (with standardized questions)
- Verification of licensure and credentials, and documentation of findings (this can include professional licenses and credentials as well as drivers' or other licenses, certificates, or permits)
- Criminal background checks

Use care to maintain the privacy of records including the volunteers' personal information and the results of all screenings.

2. Preparing volunteers for their roles and protecting their safety

Some volunteers come to Citizen Corps programs with functional skills, and others do not. Training and orientation helps to ensure that volunteers obtain any necessary skills for the program, that they perform tasks according to the program's protocol, and that they comply with the program's procedures and chain of command. It also gives the program an opportunity to ensure that volunteers understand the hazards they will face and observe the program's safety requirements.

a) **Training and orientation.** Develop a standardized volunteer training curriculum for use by the program’s trainers. Require accepted volunteers to attend training and orientation. Training should include the following:

- Orientation to the program’s mission and policies
- Orientation to the chain of command (e.g., incident command system, national incident management system) and the role the program plays
- A clear statement of what is expected of volunteers and what they can expect from the program, including their roles and responsibilities, the limitations on those roles and responsibilities, and the expectation that they will remain within the scope of their assignment
- Clear activation and deactivation procedures, to ensure that managers and volunteers know when volunteers are acting as a program volunteer and when they are not
- Clear standards of conduct, even if it seems obvious
- Handbooks with written policies to serve as a reference for volunteers
- A simple lay explanation of liability and workers’ compensation protection for program volunteers, and the limitations of that protection (description verified in advance with an attorney)
- Emphasis on the program’s safety philosophy
- Safety guidelines and procedures for specific situations
- Refresher training, exercises, or drills

Additional training may be required for specific roles, including training on safety measures and protective equipment.

3. Managing volunteers

The best results flow from clear expectations. Adopt procedures that clearly inform both volunteers and their managers of the program’s expectations and rules of conduct. Include a warning and termination procedure to provide the program with the tools to discharge an unsuitable volunteer if necessary. Ensure that agreements with other organizations are documented in a written MOU.

a) **Volunteer management policies.** The following policies and procedures guide the program’s use of volunteers, and should be included in the program’s volunteer training and orientation:

- Confidentiality (policy for dealing with volunteers’ personal information and the personal information of members of the public)
- Limitations of volunteers’ public representation of the program (e.g., policy on who conducts media interviews)
- Volunteer roles in fundraising and handling funds

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- Policies regarding prohibited conduct, such as alcohol and drug use, and sexual harassment
 - Requirements for identification (ID) badges and other ID methods
 - Activation/deployment and deactivation procedures, including:
 - Procedures for activation
 - Supervision during activation
 - Maintaining records of deployment or activation time, location, assignment, and records of deactivation time
 - Maintaining activity records
 - Following field communications procedures
 - Conducting post-incident debriefing
 - Procedures for incident reporting and analysis (reporting incidents that occur during activation, including volunteer injuries, injuries to the public, and property damage, and analyzing those reports to identify opportunities to make future improvements)
- b) Volunteer warning and termination.** Volunteers are not employees, and thus may not be protected by some employment practice laws. Still, it is a better practice to adopt standard procedures to ensure that volunteers are treated fairly and that problem individuals are removed from their positions. It is important that the program’s warning and termination policy is explained to all volunteers before they begin any activities.
- Develop a policy that describes warning and termination procedures, and identifies specific actions that warrant immediate dismissal. Do not make those the only grounds for termination. The program needs the flexibility to terminate volunteers for other infractions and at will (without cause). The purpose of including such a list in the policy is to give notice of particularly serious infractions, not to limit the program’s discretion.
 - Document warnings and termination decisions.
 - Take action when a warning or termination is warranted under the policy.
 - Apply policies consistently and in a non-discriminatory manner.
 - Develop a policy on providing references for former volunteers.
- c) MOUs with other organizations.** Citizen Corps programs and other voluntary programs sometimes enter into agreements to work with other organizations. Such agreements may be considered contracts under state law, and the program should observe the following precautions when entering into them:
- Use care to select reputable and responsible organizations.
 - Prepare written agreements or MOUs.
 - Obtain an attorney’s review of the MOU language.

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- If an MOU form is being used have an attorney review the form and any significant modifications to be made to that form at the request of the partnering organization.
 - Include in the MOU a specific mechanism to terminate the MOU, such as a termination date or the option to terminate at any time for cause or without cause.
 - Include in the MOU a clear statement of the roles and responsibilities of all parties.
 - Do not sign an MOU that requires the program to provide insurance that it does not have and/or cannot (or will not) buy. Obtain legal review before signing a MOU that requires the program to indemnify or hold harmless another party.

d) Address the management of spontaneous or unaffiliated volunteers at the scene of an emergency.

Spontaneous or unaffiliated volunteers (volunteers who have not applied and been accepted by the program) sometimes spontaneously appear at the scene of an emergency, and managing them can tax already overloaded resources. The need to screen, train, and establish the credentials of volunteers all limit the role that unaffiliated volunteers can play. Identify organizations such as a volunteer center or onsite coordinator to which unaffiliated volunteers can be referred for possible assignment. For additional guidance on this important issue, see *Managing Spontaneous Volunteers in Times of Disaster: The Synergy of Structure and Good Intentions*, developed by the Volunteer Management Committee of National Voluntary Organizations Active in Disaster (NVOAD), at: <http://www.citizencorps.gov/pdf/ManagingSpontaneousVolunteers.pdf>

D. Integration of Risk Control Practices and Program Activities

Even the best practices to control the effects of risk will not work if they are not used. Risk control practices must become part of business as usual, which requires effort and reinforcement. Some ways to enhance adoption include:

- Obtain and publicize the support of top management.
- Include volunteers in the development of risk control practices to achieve a good fit, ownership at all levels, and more consistent compliance.
- Keep volunteers aware of expectations by including simple explanations of expected behavior and conduct (including efforts to control the effects of risk) in training and orientation materials and in other materials they regularly use.
- Briefly highlight individual risk control practices in regular meetings with team leaders or other supervisors, in newsletters, and in other regular channels of internal communication.
- Encourage all volunteers to report risk events that occur, even if no injuries or damages result, and appoint a committee that includes involved volunteers to analyze those events and make recommendations to prevent recurrences.

Risk control practices are never completely finalized. Changes and improvements may be required for any of the following reasons:

- The risk control practices adopted may not work as well as expected, or may become less effective over time.
- The program's activities, environments, and partnerships may change.
- New tools and techniques may become available.

To keep up with these changes, revisit risk periodically and include risk as a factor in any decision about changes in operations, programming, or relationships.

E. Other Financing

Risk financing is about allocating the financial consequences of risk events. In Chapter III, this manual discussed at length how state (and sometimes federal) laws allocate these financial consequences through workers' compensation, qualified immunity and indemnity, and other statutory protection. These laws, when coupled with a risk management program as described in this chapter, may provide significant protection for Citizen Corps Councils and programs, individual volunteers, organizations that volunteer their resources, and other volunteer programs. Even the best laws and risk management cannot preclude an occasional risk event for which statutory protection is insufficient. Thus, the final question is what other sources of protection or recovery might be available for Councils, programs and their volunteers. There is no single answer, but there are a number of possibilities.

1. Volunteer liability

A volunteer who injures another person, damages property or commits a wrongful act while engaged in Citizen Corps activities can explore the following possible sources of protection:

- **Homeowner's, renter's, and personal umbrella insurance.** Volunteers may have some liability protection for their volunteer activities through their own personal liability policy. Volunteers can check with their insurance agent to determine whether and for what types of liability they are covered.
- **Commercial general or public entity liability insurance.** These policies protect the organization that buys the policy, its employees, officers, and directors against liability for bodily injury, property damage, and personal injury (such as false arrest and defamation). Not all general liability policies cover volunteers; thus, some entities that use volunteers may buy a separate volunteer liability insurance policy. Public entities sometimes include volunteers under a self-insured plan instead of buying insurance. If the program's volunteers are protected by liability insurance, training should include general information about the insurance and referral to a source where volunteers can obtain more specific information.

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- **Professional liability insurance.** General liability policies exclude most coverage for professional liability, which insurers then provide under special insurance tailored for the specific profession. A volunteer who has professional liability insurance through his or her regular employer may not be protected by that insurance for volunteer work. Some professionals, however, supplement their employer's coverage with an individual professional liability policy, which may insure them during volunteer work.
 - **Automobile liability insurance.** The automobile liability insurance for a vehicle provides primary coverage for an accident involving that vehicle. However, the insurance will pay only up to the policy limits of coverage (the maximum dollar amount the policy will pay), which may not be adequate for a serious loss if the policy only has the minimum limits required by law. A volunteer that operates his or her own vehicle during volunteer activities should confirm coverage for those activities and the adequacy of its limits with the insurer. A volunteer that operates a vehicle owned by someone else should confirm coverage with that vehicle's owner.
 - **Liability insurance for directors and officers or public officials.** These policies protect against wrongful acts that cause harm other than bodily injury or property damage, and they may cover volunteers of the organization that buys them. Policy provisions greatly vary.
 - **AmeriCorps Programs.** AmeriCorps grantees are required to ensure that their employees and members have adequate liability coverage.³

It is important to remember that liability insurance has limitations. It only pays a judgment up to the policy limits. While it may pay the costs of defense, those payments sometimes reduce the limits available to pay a judgment. Liability policies define the claims they will cover and exclude other types of claims, so it is important to look carefully at the scope of coverage provided by a policy before relying on it.

2. Volunteer injury

A volunteer who is injured while engaged in Citizen Corps activities, but is not eligible for workers' compensation benefits provided by the program, a government, or an agency, can explore the following possible sources of recovery:

- **Workers' compensation.** If the volunteer was being paid by his or her regular employer at the time of the injury, regular workers' compensation benefits may be available through that employer.
- **AmeriCorps programs.** Workers' compensation is an allowable cost under an AmeriCorps grant. If state law does not require an AmeriCorps program to provide workers' compensation, the program must obtain occupational accidental death and dismemberment insurance coverage for members to cover in-service injury or incidents.⁴
- **Healthcare and disability insurance.** A volunteer may be able to recover some medical expenses and lost income through the volunteer's own healthcare insurance and disability insurance.
- **Automobile insurance.** A volunteer who was injured in a motor vehicle accident may be able to recover from his or her own automobile insurance company (if the volunteer was driving his or her own car at the time of the accident); the automobile insurance company for the vehicle in which he or she was

injured (if the vehicle in which he or she was injured was owned by someone else); or the automobile insurance company for the owner of another vehicle involved in the accident (if that driver was at fault).

- **Personal injury lawsuit.** A volunteer may be able to recover medical expenses, lost income, and other damages, such as pain and suffering, through a personal injury lawsuit against those whose negligent or intentional actions caused the injury. The injured volunteer can file a lawsuit even if the other party does not have liability insurance, but the judgment will be more difficult to collect.
- **Accidental injury, accident and sickness, or accidental death and dismemberment insurance.** A volunteer for a local government, agency, or a nonprofit organization may be covered for some medical costs under accidental injury insurance purchased by the organization for its volunteers. These policies may cover only the expenses that are not paid by the volunteer's own health insurance. Generally, employees would not be covered by these policies because most employees are covered by workers' compensation.

Even if a volunteer receives workers' compensation benefits, he or she may be able to sue a third party (usually not the entity that provided the workers' compensation benefits) who negligently or intentionally caused or contributed to the injury, for example, the owner of premises upon which the volunteer was injured, if that owner has no immunity. The volunteer would usually be required to reimburse the provider of the workers' compensation benefits out of any recovery.

References

1. Herman, Melanie L. and Jackson, Peggy J., *No Surprises: Harmonizing Risk and Reward in Volunteer Management*, Nonprofit Risk Management Center, Washington, DC, 2004.
2. This section of the manual includes material from the Medical Reserve Corps Technical Assistance Series, *Special Topics: Risk Management and Liability Basics for MRC Units*, revised August 2006, which is available in full online at: [http://www.medicalreservecorps.gov/File/TASeries/5-1_Special_Topics_RiskMgmt_\(FINAL\).pdf](http://www.medicalreservecorps.gov/File/TASeries/5-1_Special_Topics_RiskMgmt_(FINAL).pdf) (accessed June 10, 2009).
3. AmeriCorps Grant Provisions (effective September 6, 2005, revised May 16, 2006), p. 27, http://www.nationalservice.org/pdf/2005_ameri corps_provisions.pdf (accessed June 10, 2009).
4. AmeriCorps Grant Provisions (effective September 6, 2005, revised May 16, 2006), p. 18, http://www.nationalservice.org/pdf/2005_ameri corps_provisions.pdf (accessed June 10, 2009).

V. Using and Improving State Law to Address Volunteer Liability

Since liability—including volunteer liability—is primarily determined by state law, updating state laws to include improvements in emergency volunteer protection should be a top priority for all organizations that promote the expanded use of emergency volunteers. Citizen Corps Councils, program leaders, and partners are encouraged to follow these steps while using the *Volunteer Liability Checklists* in the appendixes to address volunteer liability at the state level in their states.

A. Step One: Understanding Existing State Law

This manual does not try to fully describe any state’s laws. First, because any summary of statutory law is only a snapshot, it could be out of date next year, or even next month. Second, interpretation of the law requires more than reading a state’s statutes. A full understanding requires knowing how statutes work with one another, and how administrative regulations and case law further develop statutory law. Although it doesn’t take an attorney to find statutory law, and the CCVLG provides guidance on how to do that, understanding the full picture usually requires professional advice. Using the CCVLG’s research guidelines, *Finding Statutes and Bills Online*, also in the appendixes, together with the following resources, can give a more complete picture of volunteer protection in your state.

Resources:

1. State or local government attorney; volunteer private attorneys

Locating an attorney can be challenging. You need an attorney with a mix of skills (knowledge of tort, workers’ compensation, government, emergency management and disaster law) that many attorneys do not have. Private attorneys are expensive, but many law firms encourage pro bono work so you may be able to find a private attorney who is willing to donate some time. The best source of legal information is likely to be a state or local government attorney who has dealt with emergency management law. Citizen Corps programs may be able to find a government attorney through a government entity or agency with which they are affiliated. Possibilities include:

- A city or county attorney
- An attorney with a state or governor’s office of emergency management, homeland security, or public health (may have the title general counsel)
- An attorney within a state or governor’s office of volunteerism, or faith-based or community initiatives

2. Risk managers

Another possible source of information is the risk manager for a state, local government, or agency. Although most risk managers are not trained as attorneys, they regularly deal with liability and often know a great deal about their state's laws. They may also be able to provide referrals to other useful contacts.

3. Peer networking

Don't overlook peer networking. Pooled knowledge is powerful. Other Citizen Corps Partner Programs or organizations that participate in emergency management activities may have information or be able to suggest a contact that does. Be sure to confirm the accuracy of legal information provided by non-professionals before relying on it.

4. State attorney general

An attorney general is the chief legal officer for the state government and is the most authoritative source of advice on state law. A state's attorney general may provide advice or a formal written opinion¹ on matters of state law at the request of certain public officials, primarily state government officials and legislators, but sometimes city and county attorneys. An attorney general's website usually provides guidelines on who may submit a request for an opinion and the procedures for doing so. Those who are not eligible to request an opinion can get their question before the attorney general by working with someone who is.

Many states' attorneys general provide online searchable archives of their opinions. Start there. Obtaining an attorney general's opinion is likely to be a lengthy process, and the office will probably not issue an opinion if the question has already been answered.

When reading archived attorneys general's opinions, keep in mind that statutory amendments or published case law dated after the opinion can change the law upon which it was based. For example, a state legislator might use an attorney general's opinion to successfully argue for a change in the state's statutes. In that case, the opinion may no longer reflect current law. Consequently, it is always important to verify that the legal basis of the opinion is unchanged.

Legal opinions are usually based on the application of laws to a set of facts. Requirements will vary depending on the state, but the attorney general may require that a request for an opinion include a detailed statement of hypothetical facts and questions. The usefulness of the opinion will depend on good advance preparation.²

5. Questions to ask

Careful preparation of issues is important before contacting any legal advisor. See the questions raised throughout this manual as a starting point.

B. Step Two: Working Within Existing State Law

State law may already provide protection for emergency volunteers. If so, the easiest approach may be to design procedures to ensure that emergency volunteers qualify for existing protection.

Connecticut's Department of Emergency Management and Homeland Security (Department) took this approach in 2006. First, it obtained an opinion from the Connecticut attorney general's office that CERT volunteers were protected under Connecticut's Civil Preparedness and Emergency Services law. This protection included immunity from liability (except for willful misconduct) and injury benefits. According to the Attorney General's opinion, volunteers had to meet the following requirements to qualify for protection:

- Recruited and trained by an established local Citizens Corps Council under the direction of a designated local official
- Sworn in under the state loyalty oath
- Not current employees of the state, municipalities, or political subdivisions of the state
- Participated in training or activation that was properly authorized by the Department in accordance with statutory requirements³

Based on this information, the Department designed a standard operating procedure (SOP) to ensure that the requirements are reliably met. The SOP establishes responsibilities for approval of CERT team member activities and includes forms that ensure appropriate documentation.⁴

Virginia also offers opportunities to work within existing law to protect emergency volunteers. The Virginia Government Volunteers' Act authorizes, but does not require, the department, agency, or local government using volunteers (including MRC and CERT members) to provide them with liability coverage.⁵ The Virginia Workers' Compensation Act permits, but does not require, local governments to treat CERT and MRC team members as employees for purposes of workers' compensation benefits.⁶ These existing laws give emergency volunteer programs a solution they can suggest to the local governments or agencies with which they work.

C. Step Three: Changing State Law

Some states' laws simply provide less than optimal protection. In those states, another option is working to change the law. Advocating protection for emergency volunteers can be challenging. Immunity may be characterized as an effort to eliminate a legal remedy, rather than as an effort to build emergency forces. Commitments of governmental funds to defend emergency volunteers and pay claims against them or to extend workers' compensation benefits to emergency volunteers are potentially expensive. Relaxation of requirements for licenses, certificates, and permits temporarily reduces the protection offered by state regulatory control. Consequently, changes to existing law are likely to require patient efforts to explain the need and to develop a broad base of support.

There is a lot of state legislative activity in this area, and some of it has been successful. A full discussion of legislative advocacy techniques is beyond the scope of this Guide, but the following are some points to consider in developing a plan to change state law:

- **Do the homework.** Before you begin, know the existing law and what specific changes need to be made. If possible, work within the existing statutory framework rather than to propose enacting new statutes.
- **Borrow from others.** Gather examples of good statutory language from other states and from model legislation.
- **Timing can be everything.** Use teachable moments to press for legislative change. Legislators have many issues battling for their attention. They may be more receptive to legislative proposals related to emergency volunteers following disasters, even disasters occurring in other parts of the world.
- **Find an advocate.** Identify and approach legislators whose records indicate they are potential champions. Legislators with a demonstrated interest in improving emergency management are potential allies.
- **Build a network.** Find like-minded people and build a broad coalition of support. Where possible, include potential opponents such as trial attorneys. Some compromise may be required, so identify priorities.
- **Follow up.** Stay informed about the progress of any relevant legislation. Most states have legislative websites that provide information on pending legislation.⁷
- **Be flexible.** Be prepared to work with legislative committees.
- **Try again.** Remember that setbacks are not permanent. Proposed legislation often fails more than once before it is passed.

The state of Washington is an example of a successful legislative advocacy initiative.⁸ After September 11, 2001, the Eastern Washington Medical Reserve Corps was formed, but it faced challenges. Hospitals were reluctant to allow volunteer medical workers to provide care on their premises due to concerns about potential liability and accreditation status. Recruitment of volunteer retired physicians was limited by the state's cumbersome requirements for retired medical licenses, which included maintaining liability insurance.

To address these challenges, an effort began to expand the availability of licenses for retired medical workers who were willing to serve as emergency volunteers. A proposed amendment gained support through 2004 but died in committee in 2005. After Hurricane Katrina struck New Orleans in August 2005, H.B. 1850 passed the Washington legislature unanimously and was signed into law by the governor on March 15, 2006.⁹ In 2007, this expanded liability protection was extended by H.B. 1073 to include non-medical emergency workers as well.¹⁰

References

1. Examples include the 1994 Kentucky Attorney General's Opinion on Volunteer Engineers in Post-Earthquake Disaster Assessment, OAG 94-16, Questions Concerning Liability and Workers' Compensation Insurance, at: <http://ag.ky.gov/NR/rdonlyres/0D1B9BCF-4BB7-445D-9C7F-B82FBF77AA36/0/OAG9416.htm> (accessed June 10, 2009); and a 2005 Virginia opinion on liability issues related to the activities of volunteers responding to emergency or disaster situations, specifically Medical Reserve Corps, OP. NO. 04-083, at: <http://www.oag.state.va.us/OPINIONS/2005opns/04-083w.pdf> (accessed June 10, 2009).
2. An example of a thorough and well-prepared request for legal advice directed to the Maryland attorney general is in the appendixes of the CCVLG.
3. Source: presentation of Brenda Bergeron at National Preparedness Conference, Alexandria, VA, June 11, 2007.
4. See the of Connecticut Attorney General opinion and standard operating procedure of the Connecticut Department of Emergency Management and Homeland Security in the appendixes to this Guide.
5. Virginia Code §2.2-3601 and §2.2-3605.
6. Virginia Code §65.2-101 , "employee", subsection 1.
7. See *Links to State Statutory and Legislative Websites* in the appendixes to this Guide. For those interested in tracking Congress, Thomas, the Library of Congress' website, provides official information about pending federal legislation, at: <http://thomas.loc.gov/>. Unofficial tracking is available through a free website at: <http://www.govtrack.us/>, which will e-mail registered users about legislative activity in subject areas where they have designated an interest.
8. This discussion is based upon a presentation, Refining the Wheel, by Bill Basl and Tyler Ray of the Washington Commission for National and Community Service at the National Preparedness Conference in Alexandria, VA, on June 11, 2007.
9. Revised Code of Washington §18.130.360.
10. Revised Code of Washington §38.52.180.

Conclusion

As with many areas of the law that are determined at the state level, there is no uniformity of the law on volunteer liability issues. But there are trends and patterns, which have been addressed in this manual. These trends and patterns confirm that although much remains to do, much has been done. Liability laws have not been implemented systematically or consistently, and information about what has been done is not widely available or easily accessible.

Relief may yet come in the form of comprehensive federal legislation. This seems unlikely in the near future, due to the complexity of the political process, conflicting points of view, and the difficulty of reaching a consensus on all the issues explored in this manual. Although a legislative consensus would seem most likely in the wake of a major disaster, proposed legislation introduced after September 11, 2001, and Hurricane Katrina has mostly stalled. If Hurricane Katrina and the prospect of pandemic influenza are not sufficient motivation, it is difficult to imagine what would be.

Thus we come back to the three steps discussed in this manual: understanding existing state law; working within existing state law; and changing state law. These three steps are not only possible, but are happening all around us, as recent legislative successes at the state level demonstrate.

The appendixes to this manual are tools to use in the learning process, and are examples of what others have done. They include the following:

- **Glossary of Terms.** Defines terms that are used in the manual and are important to the understanding of liability issues.
- **Volunteer Liability Checklists.** Provides a series of questions to lead you through an investigation of the protection provided to emergency volunteers in your state.
- **Links to State Statutory and Legislative Websites.** Provides links to each state's statutory and legislative websites and their emergency management agency website. Identifies each state's emergency management or homeland security statute, if the state has one.
- **Finding Bills and Statutes Online.** Describes how to search for state laws online.
- **Additional Resources.** Identifies additional resources of potential interest to users of the CCVLG.
- **Examples.** Includes examples of approaches used in different states.

We welcome your thoughts, comments, suggestions, and contributions to this effort. If you believe that you know of a resource that would be helpful, if you know something about a useful law or legislative effort, or if you have comments or suggestions about anything in the Citizen Corps Volunteer Liability Guide, please contact Citizen Corps at www.citizencorps.gov.

Appendix 1: Glossary of Terms

Agent: One who has the authority to act for another.

Case law: Law established by previous court decisions of record; also referred to as common law.

Contract: A legally enforceable agreement.

Damages: A loss caused by a negligent or intentional act or by a breach of contract; in the context of a lawsuit, the amount awarded to the injured party (plaintiff) to be paid by the defendant.

Defendant: A person against whom a lawsuit or a criminal charge has been brought in court.

Defense costs: The amount paid for attorneys' fees, court expenses, and other costs of protecting a defendant's interests in a claim or a lawsuit.

Emergency declaration: A formal statement that a state of emergency exists, made by the authorized representative of the declaring government.

Emergency Management Assistance Compact (EMAC): The most widely known interstate mutual aid compact. EMAC was ratified by the U.S. Congress in 1996, and the legislatures of all 50 states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia have adopted EMAC.

Federal Employee Compensation Act: A federal law that provides workers' compensation coverage to federal employees for employment-related injuries and occupational diseases.

Federal Tort Claims Act: A federal statute that establishes the circumstances under which the federal government can be sued in federal court for the negligent or intentional acts of its employees. The federal government will then serve as the defendant in place of a federal employee sued for actions within the scope of employment.

Good Samaritan laws: State laws that protect from liability for ordinary negligence those who voluntarily and without compensation provide assistance to injured parties at the scene of an accident. Protection may be limited to individuals with specified training.

Governmental or sovereign immunity: A doctrine derived from English common law that no governmental body can be sued without its consent. The Federal Tort Claims Act and state tort claims acts give consent for the adopting government to be sued; however, most tort claims acts continue to provide immunity for the government, its employees, and sometimes its volunteers, in specific situations.

Gross negligence: Negligence that goes beyond failure to use reasonable care and shows recklessness or willful disregard for the safety of others. Gross negligence can be the basis for seeking punitive damages in a lawsuit.

Immunity: Exemption from legal penalties or requirements; in the civil liability context, an exemption from lawsuits granted by law for a category of activities protected by public policy.

Indemnity or indemnification: An agreement to pay an obligation or loss on behalf of someone else.

Intentional tort: An act that is intentional and that causes harm to someone else, for which that person may bring a lawsuit for damages. Examples include assault, battery, defamation, fraud, and trespass.

Intermittent disaster response personnel: Intermittent or occasional personnel appointed to support the National Disaster Medical System in public health emergencies.

Judgment: The decision of a court; in a civil lawsuit, the decision of the court on the plaintiff's claim for damages or other remedies.

Liability: A legal responsibility, especially for one's acts or omissions. Liability can arise from negligent or intentional acts or omissions that cause harm (civil or tort liability); breach of the terms of a contract; or violate statutory or regulatory requirements.

Lawsuit: A civil action brought before a court in which the party that brings the action, the plaintiff, seeks a legal remedy against another party, the defendant.

License: Permission or authority granted to engage in an activity; in the context of practicing an occupation or profession, the license is granted by a government authority.

Negligence: Failure to use reasonable care; failure to use the care that a reasonable and prudent person would use under similar circumstances.

Negligent hiring, supervision, or retention: An employer's failure to use reasonable care in hiring, supervising, or retaining its employees, which can serve as the basis for a lawsuit against the employer.

Negligent tort: An act that is negligent and that causes harm to someone else, for which that person may bring a lawsuit for damages.

Nongovernmental entities: Organizations that are not governmental; businesses and nonprofit organizations.

Party: The plaintiff or the defendant in a lawsuit.

Plaintiff: The person or entity that brings a legal action against another person or entity (the defendant) to seek relief.

Professional liability: Liability of workers with special skills or expertise for their errors and omissions during the course of practicing that profession.

Punitive damages: Additional damages awarded to a plaintiff in a lawsuit as a monetary punishment of a defendant whose actions meet the requirements for awarding punitive damages in that jurisdiction, which are commonly gross negligence, willful and wanton misconduct, or reckless disregard for the safety of others.

Reasonable care or due care: The degree of caution that a reasonably prudent person would use under similar circumstances; failure to use reasonable care is negligence.

Regulatory law: Rules adopted by governmental agencies based on authorization granted by statutory law.

Statute or statutory law: Laws enacted by elected legislative bodies, such as the U.S. Congress or state legislatures.

Strict liability: Liability imposed without proof of negligence, often in the case of products liability or ultra-hazardous activities, such as the use of explosive devices.

Tort: A private or civil wrong or injury (other than a breach of contract) for which the law provides a remedy through an action in court for damages.

Vicarious liability: Liability of a person or entity based upon the acts or omissions of someone under the liable party's control, not on the liable party's own acts or omissions. An employer's liability for the acts or omissions of its employee is a form of vicarious liability, when not based on any direct negligence of the employer.

Federal Volunteer Protection Act of 1997: A federal statute passed by the U.S. Congress and signed into law by the President of the United States in 1997, for the purpose of providing certain individual volunteers with some protection from civil liability.

Workers' Compensation: Laws that provide statutory benefits, including lost wages and medical care, to employees who are injured in the scope and course of their employment, without regard to who was at fault. In exchange, the employee's right to bring a lawsuit against the employer is limited.

Appendix 2: Volunteer Liability Checklists

How to Use These Checklists

The following three checklists ask questions to guide your evaluation of how emergency volunteer liability, workers' compensation, and licensing issues are handled in your state. You can use these checklists in conjunction with *Finding Statutes and Bills Online* to conduct your own research using your state's online statutes. They can also help you formulate your questions to qualified experts, such as attorneys.

Use the Notes section to record your findings. The completed checklists will help you prioritize issues for attention.

Civil Liability

Question	Notes
Does the state have an emergency management or homeland security statute that provides immunity from civil liability for emergency management workers or disaster workers?	
Are emergency management workers or disaster volunteers extended the same rights and immunities as state and local government employees performing similar functions?	
Does the state or a local government or an agency provide authorized emergency management workers with a legal defense and payment of judgment if they are sued for authorized activities?	
Is an emergency management worker or disaster worker required to have a current in-state license, certificate, or permit to qualify for liability protection?	
Is an emergency management worker or disaster volunteer required to take a loyalty oath to qualify for protection?	
Are authorized emergency management volunteers included in the definition of <i>emergency management worker</i> or <i>disaster worker</i> for purposes of statutory liability protection?	
What registration or acceptance requirements must an emergency management volunteer meet to qualify for liability protection?	
Are nongovernmental entities, including government contractors that are involved in emergency response, protected from liability, or is protection limited to individuals?	
Are individuals and nongovernmental entities protected from liability even if they receive compensation?	
Are volunteers protected from liability during planning, training, exercises, drills, and other authorized preparedness activities, or only during declared emergencies?	
Does the scope of protection include natural hazard events, human-caused disasters, and public health emergencies caused by bioterrorist events or natural pandemic illness?	
Is the liability protection that is provided broad (civil liability or liability) or narrow (bodily injury, death, and property damage)?	

Civil Liability, continued

Question	Notes
Are any activities in which emergency management volunteers might engage excluded from protection (for example, driving a car)?	
Does the state statute protect from liability individuals and entities that permit the use of their real or personal property in emergency preparedness and response activities?	
Does the state have a volunteer protection statute that protects volunteers from liability when they are engaged in activities unrelated to a declared emergency?	
Does the state limit the protection provided to volunteers under the federal Volunteer Protection Act of 1997?	
Does the state have a Good Samaritan law that provides immunity from civil liability for individuals who try to help someone having a health emergency in a setting where there is no ready access to professional care?	
Does the state's Good Samaritan law limit its protection to licensed healthcare providers, such as physicians and nurses, or to people with first aid/CPR training, or is protection extended to any person?	
Is the state, territorial, or tribal government a signatory to the Emergency Management Assistance Compact (EMAC) or any other interstate emergency management compacts?	
Does the state, territorial, or tribal government have a plan for designating Citizen Corps or other emergency management volunteers as part of its emergency forces in its response to EMAC requests?	
For emergency management volunteers who are responding to an emergency in another state, but who are not part of a state's emergency forces under EMAC, does the state to which the volunteers are responding provide liability protection?	
Are there any intrastate mutual aid agreements in place that affect volunteer liability?	
To what extent does any statutory protection exclude gross negligence, willful and wanton misconduct, or reckless disregard for the safety of others?	

Civil Liability, continued

Question	Notes
Does the program have a legal advisor?	
Does the program manage the risk of using volunteers by having a volunteer application, screening, selection, and termination process; provide training and orientation; maintain activation and deactivation records; provide appropriate supervision for volunteer work; and ensure that volunteers understand and obey the limits of their authority?	
Are activation and deactivation procedures clear, so that volunteers know when they are protected and when they are not?	
Does any government, agency, or other entity provide liability insurance that protects emergency management volunteers?	

Workers' Compensation

Question	Notes
Does the state have an emergency management or homeland security statute that provides workers' compensation benefits for emergency management workers or disaster workers who are injured, become ill, or are killed?	
Are emergency management workers or disaster volunteers extended the same rights and immunities as state and local government employees performing similar functions?	
Is an emergency management worker or disaster volunteer required to take a loyalty oath to qualify for workers' compensation benefits?	
Are authorized emergency management volunteers included in the definition of <i>emergency management worker</i> or <i>disaster worker</i> for purposes of workers' compensation protection?	
What registration or acceptance requirements must an emergency management volunteer meet to qualify for workers' compensation protection?	
Are emergency management volunteers eligible for workers' compensation benefits for injuries that occur during planning, training, exercises, drills, and other authorized preparedness activities, or only during declared emergencies?	
Are emergency management workers or disaster workers included in the definition of <i>employee</i> under the state's regular workers' compensation statute?	
Do emergency management volunteers receive the same workers' compensation benefits as other workers, or are their benefits limited or conditioned on appropriation of funds?	
Are an emergency management volunteers' workers' compensation benefits secondary to benefits available from another source, such as a regular employer or a federal government program for a specific disaster?	
If the local governments and agencies with which emergency management volunteers are affiliated provide workers' compensation benefits, are they required to provide these benefits by state law, or is it optional?	

Workers' Compensation, continued

Question	Notes
Is the state, territorial, or tribal government a signatory to the Emergency Management Assistance Compact (EMAC) or any other interstate emergency management compacts?	
Does the state, territorial, or tribal government have a plan for designating Citizen Corps or other emergency management volunteers as part of its emergency forces in its response to EMAC requests for interstate assistance?	
Does the state, territorial, or tribal government have a plan for designating Citizen Corps or other emergency management volunteers as part of its emergency forces in its response to EMAC requests for interstate assistance?	
Are there any intrastate mutual aid agreements in place that affect emergency management volunteer workers' compensation?	
Does the government, agency, or other entity with which the emergency management volunteers work have an insurance policy that pays healthcare expenses or other benefits to those who are injured?	

Licenses, Certificates, and Permits

Question	Notes
<p>What licensing, certificate, and permit requirements apply to workers whose skills are required in emergency management (e.g., licensed healthcare workers, architects, engineers, construction companies, mechanical trades, and commercial and regular vehicle drivers)?</p>	
<p>Is any state to which emergency management volunteers are deployed a party to the Emergency Management Assistance Compact (EMAC), and will the volunteers be designated as part of the responding state's emergency management forces?</p>	
<p>Does a state that might deploy emergency forces to another state under EMAC have any intrastate mutual aid agreements or other contractual relationships that provide a basis for incorporating local government personnel into state emergency forces in an EMAC response?</p>	
<p>Does any state to which emergency management volunteers are deployed waive license, certificate, and permit requirements for emergency and disaster workers from other states, including volunteers who are not part of their state's EMAC emergency forces, or recognize licenses, certificates, and permits issued in another state?</p>	
<p>Has the governor of a state affected by a disaster placed any restrictions or limitations on the recognition of out-of-state licenses, certificate, or permits?</p>	
<p>Do the state's professional licensure statutes include provisions for issuing special licenses to retired healthcare workers who register as emergency management volunteers?</p>	
<p>Does the law of any state in which licensed emergency management volunteers may respond provide civil or criminal penalties for practicing without a required license?</p>	



Appendix 3: Links to State Statutory and Legislative Websites

The Citizen Corps Volunteer Liability Project Links as of June 4, 2009

Alabama

- State emergency management agency name: Alabama Emergency Management Agency
- Link to state emergency management agency website: <http://disaster.ema.alabama.gov/>
- Link to website with state's statutes:
http://www.alabamainteractive.org/alabamainteractive_shell/Welcome.do?url=http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm
- State Emergency Management Act: Title 31, Military Affairs and Civil Defense, Chapter 9, Emergency Management
- Link to website for legislation: <http://www.legislature.state.al.us/>

Alaska

- State emergency management agency name: Alaska Division of Homeland Security and Emergency Management
- Link to state emergency management agency website: <http://www.ak-prepared.com/>
- Link to website with state's statutes: <http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx05?>
- State Emergency Management Act: Title 26, Military Affairs, Veterans and Disasters, Chapter 26.20, Homeland Security and Civil Defense; and Chapter 26.23, Alaska Disaster Act
- Link to website for legislation: <http://w3.legis.state.ak.us/index.php>

Arizona

- State emergency management agency name: Arizona Division of Emergency Management
- Link to state emergency management agency website: www.dem.azdema.gov
- Link to website with state's statutes: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>
- State Emergency Management Act: Title 26, Military Affairs and Emergency Management, Chapter 2, Emergency Management
- Link to website for legislation: <http://www.azleg.state.az.us/>

Arkansas

- State emergency management agency name: Arkansas Department of Emergency Management
- Link to state emergency management agency website: <http://www.adem.arkansas.gov/>
- Link to website with state's statutes:
<http://www.arkleg.state.ar.us/SearchCenter/Pages/arkansascode.aspx>
- State Emergency Management Act: Title 12, Law Enforcement, Emergency Management and Military Affairs, Title 5, Emergency Management
- Link to website for legislation: <http://www.arkleg.state.ar.us/assembly/2009/R/Pages/Home.aspx>

California

- State emergency management agency name: California Governor's Office of Emergency Services
- Link to state emergency management agency website: www.oes.ca.gov
- Link to website with state's statutes: <http://www.leginfo.ca.gov/calaw.html>
- State Emergency Management Act: Government Code Title 2, Government of the State of California, Division 1, General, Chapter 7, California Emergency Services Act
- Link to website for legislation: <http://www.leginfo.ca.gov/>

Colorado

- State emergency management agency name: Colorado Division of Emergency Management
- Link to state emergency management agency website: <http://dola.colorado.gov/dem/>
- Link to website with state's statutes: <http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>
- State Emergency Management Act: Title 24, Government–State, Article 32, Department of Local Affairs, Parts 21–26
- Link to website for legislation: <http://www.leg.state.co.us/>

Connecticut

- State emergency management agency name: Connecticut Department of Emergency Management and Homeland Security
- Link to state emergency management agency website: <http://www.ct.gov/demhs/site/default.asp>
- Link to website with state's statutes: <http://www.cga.ct.gov/2005/pub/titles.htm>
- State Emergency Management Act: Title 28, Civil Preparedness and Emergency Services, Chapter 517, Civil Preparedness, Department of Emergency Management and Homeland Security
- Link to website for legislation: <http://www.cga.ct.gov/>

Delaware

- State emergency management agency name: Delaware Emergency Management Agency
- Link to state emergency management agency website: <http://www.state.de.us/dema/>
- Link to website with state's statutes: <http://delcode.delaware.gov/index.shtml>
- State Emergency Management Act: Title 20, Military and Civil Defense, Chapter 31, Emergency Management
- Link to website for legislation: <http://legis.delaware.gov/>

District of Columbia

- State emergency management agency name: District of Columbia Homeland Security and Emergency Management Agency
- Link to state emergency management agency website: <http://dcema.dc.gov/dcema/site/default.asp>
- Link to website with state's statutes: <http://government.westlaw.com/linkedslice/default.asp?SP=DCC-1000>
- State Emergency Management Act: Division 1, Government of District, Title 7, Human Health Care and Safety, Subtitle J, Public Safety, Chapter 22, Homeland Security; and Chapter 23, Public Emergencies
- Link to website for legislation: <http://www.dccouncil.washington.dc.us/>

Florida

- State emergency management agency name: Florida Division of Emergency Management
- Link to state emergency management agency website: <http://www.floridadisaster.org/index.asp>
- Link to website with state's statutes: <http://www.flsenate.gov/Statutes/index.cfm>
- State Emergency Management Act: Title XVII, Military Affairs and Related Matters, Chapter 252, Emergency Management
- Link to website for legislation:
<http://www.leg.state.fl.us/Welcome/index.cfm?CFID=104649909&CFTOKEN=13983365>

Georgia

- State emergency management agency name: Georgia Emergency Management Agency
- Link to state emergency management agency website: <http://www.gema.state.ga.us/>
- Link to website with state's statutes: <http://www.lexis-nexis.com/hottopics/gacode/default.asp>
- State Emergency Management Act: Title 38, Military, Emergency Management and Veterans Affairs, Chapter 3, Emergency Management
- Link to website for legislation: <http://www.legis.state.ga.us/>

Hawaii

- State emergency management agency name: Hawaii State Civil Defense
- Link to state emergency management agency website: <http://www.scd.hawaii.gov/>
- Link to website with state's statutes: <http://www.capitol.hawaii.gov/site1/docs/docs.asp#hrs>
- State Emergency Management Act: Title 10, Chapter 127, Disaster Relief; Chapter 128, Civil Defense and Emergency Act; Chapter 128D, Environmental Response; and Chapter 128E, Hazardous Materials
- Link to website for legislation: <http://www.capitol.hawaii.gov/>

Idaho

- State emergency management agency name: Idaho Bureau of Homeland Security
- Link to state emergency management agency website: <http://www.bhs.idaho.gov/>
- Link to website with state's statutes: <http://www.legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>
- State Emergency Management Act: Title 46, Militia and Military Affairs, Chapter 10, State Disaster Preparedness Act
- Link to website for legislation: <http://www.legislature.idaho.gov/>

Illinois

- State emergency management agency name: Illinois Emergency Management Agency
- Link to state emergency management agency website: <http://www.state.il.us/iema/>
- Link to website with state's statutes: <http://www.ilga.gov/legislation/ilcs/ilcs.asp>
- State Emergency Management Act: Chapter 20, Executive Branch, Section 3305, Illinois Emergency Management Agency Act
- Link to website for legislation: <http://www.ilga.gov/>

Indiana

- State emergency management agency name: Indiana Department of Homeland Security
- Link to state emergency management agency website: <http://www.in.gov/dhs/>
- Link to website with state's statutes: <http://www.in.gov/legislative/ic/code/>
- State Emergency Management Act: Title 10, Public Safety, Article 14, Emergency Management
- Link to website for legislation: <http://www.in.gov/legislative/>

Iowa

- State emergency management agency name: Iowa Homeland Security and Emergency Management
- Link to state emergency management agency website: <http://www.iowahomelandsecurity.org/>
- Link to website with state's statutes: <http://www.legis.state.ia.us/IowaLaw.html>
- State Emergency Management Act: Title 1, State Sovereignty and Management, Subtitle 12, Emergency Control, Chapter 29C, Emergency Management and Security
- Link to website for legislation: <http://www.legis.state.ia.us/>

Kansas

- State emergency management agency name: Kansas Division of Emergency Management
- Link to state emergency management agency website: <http://www.kansas.gov/kdem/>
- Link to website with state's statutes: <http://www.kslegislature.org/legsrv-statutes/index.do>
- State Emergency Management Act: Chapter 48, Militia, Defense and Public Safety, Article 9, Emergency Preparedness for Disaster
- Link to website for legislation: <http://www.kslegislature.org/legsrv-legisportal/index.do>

Kentucky

- State emergency management agency name: Kentucky Division of Emergency Management
- Link to state emergency management agency website: <http://kyem.ky.gov/>
- Link to website with state's statutes: <http://www.lrc.ky.gov/Statrev/frontpg.htm>
- State Emergency Management Act: Title 5, Military Affairs, Chapter 39, Disaster and Emergency Services Management
- Link to website for legislation: <http://www.lrc.ky.gov/legislation.htm>

Louisiana

- State emergency management agency name: Louisiana Governor's Office of Homeland Security and Emergency Preparedness
- Link to state emergency management agency website: <http://www.ohsep.louisiana.gov/>
- Link to website with state's statutes: <http://www.legis.state.la.us/lss/tsrssearch.htm>
- State Emergency Management Act: Louisiana Revised Statutes, Chapter 6, §29:721, Louisiana Homeland Security and Emergency Assistance and Disaster Act; and Chapter 9, §29:760, Louisiana Health Emergency Powers Act
- Link to website for legislation: <http://www.legis.state.la.us/>

Maine

- State emergency management agency name: Maine Emergency Management Agency
- Link to state emergency management agency website: <http://www.state.me.us/mema/>
- Link to website with state's statutes: <http://janus.state.me.us/legis/statutes/>
- State Emergency Management Act: Title 37-B, Defense, Veterans, and Emergency Management, Chapter 13, Maine Emergency Management Agency
- Link to website for legislation: <http://janus.state.me.us/legis/>

Maryland

- State emergency management agency name: Maryland Emergency Management Agency
- Link to state emergency management agency website: <http://www.mema.state.md.us/MEMA/index.jsp>
- Link to website with state's statutes: <http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=>
- State Emergency Management Act: Public Safety, Title 14, Emergency Management
- Link to website for legislation: <http://mlis.state.md.us/>

Massachusetts

- State emergency management agency name: Massachusetts Emergency Management Agency
- Link to state emergency management agency website: <http://www.mass.gov/?pageID=eopsagencylanding&L=3&L0=Home&L1=Public+Safety+Agencies&L2=Massachusetts+Emergency+Management+Agency&sid=Eeops>
- Link to website with state's statutes: <http://www.mass.gov/legis/laws/mgl/index.htm>
- State Emergency Management Act: Chapter 639 of the Acts of 1950, Massachusetts Civil Defense Act, as amended to date
- Link to website for legislation: <http://www.mass.gov/legis/>

Michigan

- State emergency management agency name: Michigan Emergency Management and Homeland Security Division
- Link to state emergency management agency website: http://www.michigan.gov/msp/0,1607,7-123-1593_3507---,00.html
- Link to website with state's statutes: [http://www.legislature.mi.gov/\(S\(uicchaamb2dayd45bhym545\)\)/mileg.aspx?page=ChapterIndex](http://www.legislature.mi.gov/(S(uicchaamb2dayd45bhym545))/mileg.aspx?page=ChapterIndex)
- State Emergency Management Act: Chapter 30, Civilian Defense, Act 390 of 1976, Emergency Management Act
- Link to website for legislation: <http://www.legislature.mi.gov/>

Minnesota

- State emergency management agency name: Minnesota Homeland Security and Emergency Management
- Link to state emergency management agency website: <http://www.hsem.state.mn.us/>
- Link to website with state's statutes: <http://www.leg.state.mn.us/leg/statutes.asp>
- State Emergency Management Act: Chapter 12, Emergency Management
- Link to website for legislation: <http://www.leg.state.mn.us/>

Mississippi

- State emergency management agency name: Mississippi Emergency Management Agency
- Link to state emergency management agency website: <http://www.msema.org/>
- Link to website with state's statutes:
- <http://michie.com/mississippi/lpext.dll?f=templates&fn=main-h.htm&cp=>
- State Emergency Management Act: Title 33, Military Affairs, Chapter 15, Emergency Management and Civil Defense
- Link to website for legislation: <http://billstatus.ls.state.ms.us/>

Missouri

- State emergency management agency name: State of Missouri Emergency Management Agency
- Link to state emergency management agency website: <http://sema.dps.mo.gov/semepage.htm>
- Link to website with state's statutes: <http://www.moga.mo.gov/statutesearch/>
- State Emergency Management Act: Title V, Military Affairs and Police, Chapter 44, Civil Defense
- Link to website for legislation: <http://www.moga.mo.gov/>

Montana

- State emergency management agency name: Montana Disasters and Emergency Services Division of Department of Military Affairs
- Link to state emergency management agency website: <http://dma.mt.gov/des/>
- Link to website with state's statutes: http://data.opi.mt.gov/bills/mca_toc/index.htm
- State Emergency Management Act: Title 10, Military Affairs and Disaster and Emergency Services, Chapter 3, Disaster and Emergency Services
- Link to website for legislation: <http://leg.mt.gov/css/default.asp>

Nebraska

- State emergency management agency name: Nebraska Emergency Management Agency
- Link to state emergency management agency website: <http://www.nema.ne.gov/>
- Link to website with state's statutes: <http://uniweb.legislature.ne.gov/laws/laws.php>
- State Emergency Management Act: Chapter 81, State Departments, Sections 81-829.31–81-829.75, Emergency Management Act
- Link to website for legislation: <http://www.unicam.state.ne.us/>

Nevada

- State emergency management agency name: Nevada Division of Emergency Management
- Link to state emergency management agency website: <http://dem.state.nv.us/>
- Link to website with state's statutes: <http://leg.state.nv.us/law1.cfm>
- State Emergency Management Act: Title 36, Military Affairs and Civil Emergencies, Chapter 414, Emergency Management
- Link to website for legislation: <http://www.leg.state.nv.us/>

New Hampshire

- State emergency management agency name: New Hampshire Homeland Security and Emergency Management
- Link to state emergency management agency website: <http://www.nh.gov/safety/divisions/bem/>
- Link to website with state's statutes: <http://www.gencourt.state.nh.us/ras/html/indexes/default.html>
- State Emergency Management Act: Title 1, The State and its Government, Chapter 21-P, Department of Safety, Sections 21-P:34–21-P:48, Division of Emergency Services, Communications, and Management
- Link to website for legislation: <http://www.gencourt.state.nh.us/index/>

New Jersey

- State emergency management agency name: New Jersey Office of Emergency Management
- Link to state emergency management agency website: <http://www.state.nj.us/njoem/>
- Link to website with state's statutes: http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=150770&depth=2&expandheadings=off&headingswithhits=on&infobase=statutes.nfo&softpage=TOC_Frame_Pg42
- State Emergency Management Act: Appendix A:9-30, Civil Defense and Disaster Control Act; see compilation of authorities at: http://www.state.nj.us/njoem/law_lawlist.html
- Link to website for legislation: <http://www.njleg.state.nj.us/>

New Mexico

- State emergency management agency name: New Mexico Department of Homeland Security and Emergency Management
- Link to state emergency management agency website: <http://www.nmdhsem.org/default.asp?CustComKey=270308&CategoryKey=274276&pn=Page&DomName=nmdhsem.org>
- Link to website with state's statutes: <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>
- State Emergency Management Act: Chapter 12, Miscellaneous Public Affairs Matters, Article 10, All Hazard Emergency Act; Article 10A, Public Health Emergency Response; Article 10B, Interstate Mutual Aid; Article 10C, Volunteer Emergency Responder Job Protection; Article 12, Hazardous Materials Response Act
- Link to website for legislation: <http://legis.state.nm.us/lcs/>

New York

- State emergency management agency name: New York State Emergency Management Office
- Link to state emergency management agency website: <http://www.semo.state.ny.us/>
- Link to website with state's statutes: <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>; or unofficial source: <http://law.justia.com/newyork/codes/>
- State Emergency Management Act: Consolidated Laws EXC (Executive Code) Article 2-B, State and Local Natural and Man-made Disaster Preparedness, § 29-b, Use of Civil Defense Forces in Disasters (DEA); Unconsolidated Laws, DEA (Defense Emergency Act 1951), Chapter 784/51
- Link to website for legislation: <http://assembly.state.ny.us/leg/>

North Carolina

- State emergency management agency name: North Carolina Division of Emergency Management
- Link to state emergency management agency website: <http://www.nccrimecontrol.org/Index2.cfm?a=000003,000010>
- Link to website with state's statutes: <http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp>
- State Emergency Management Act: Chapter 166A, North Carolina Emergency Management Act
- Link to website for legislation: <http://www.ncga.state.nc.us/Legislation/Legislation.html>

North Dakota

- State emergency management agency name: North Dakota Department of Emergency Services
- Link to state emergency management agency website: <http://www.nd.gov/des/>
- Link to website with state's statutes: <http://www.legis.nd.gov/information/statutes/cent-code.html>
- State Emergency Management Act: Title 37, Military Services, Chapter 37-17.1, Emergency Services
- Link to website for legislation: <http://www.legis.nd.gov/>

Ohio

- State emergency management agency name: Ohio Emergency Management Agency
- Link to state emergency management agency website: <http://ema.ohio.gov/>
- Link to website with state's statutes: <http://codes.ohio.gov/>
- State Emergency Management Act: Title 55 (LV), Roads, Highways, Bridges, Chapter 5502, Department of Public Safety, Sections 5502.21–5502.41
- Link to website for legislation: <http://www.legislature.state.oh.us/>

Oklahoma

- State emergency management agency name: Oklahoma Department of Emergency Management
- Link to state emergency management agency website: <http://www.ok.gov/OEM/>
- Link to website with state's statutes: <http://www.lsb.state.ok.us/osStatuesTitle.html>
- State Emergency Management Act: Title 63, Public Health and Safety, Sections 63-683.1–63-683.24, Oklahoma Emergency Management Act
- Link to website for legislation: <http://www.lsb.state.ok.us/>

Oregon

- State emergency management agency name: Oregon Emergency Management
- Link to state emergency management agency website: <http://www.oregon.gov/OMD/OEM/>
- Link to website with state's statutes: <http://www.leg.state.or.us/ors/>
- State Emergency Management Act: Chapter 401, Emergency Services and Communication
- Link to website for legislation: http://www.leg.state.or.us/bills_laws/

Pennsylvania

- State emergency management agency name: Pennsylvania Emergency Management Agency
- Link to state emergency management agency website: <http://www.pema.state.pa.us/>
- Link to website with state's statutes: Official Pennsylvania Consolidated Statutes not available online
- State Emergency Management Act: Title 35, Health and Safety, Part V, Emergency Management Services; available online through Pennsylvania Emergency Management Agency: <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4463&mode=2&PageID=454038>
- Link to website for legislation: <http://www.legis.state.pa.us/>

Rhode Island

- State emergency management agency name: Rhode Island Emergency Management Agency
- Link to state emergency management agency website: <http://www.riema.ri.gov/>
- Link to website with state's statutes: <http://www.rilin.state.ri.us/Statutes/>
- State Emergency Management Act: Title 30, Military Affairs and Defense, Chapter 30-15, Emergency Management
- Link to website for legislation: <http://www.rilin.state.ri.us/>

South Carolina

- State emergency management agency name: South Carolina Emergency Management Division
- Link to state emergency management agency website: <http://www.scemd.org/>
- Link to website with state's statutes: <http://www.scstatehouse.net/CODE/statmast.htm>
- State Emergency Management Act: Title 25, Military, Civil Defense and Veterans' Affairs, Chapter 1, Military Code, Article 4, South Carolina Emergency Preparedness Division
- Link to website for legislation: <http://www.scstatehouse.net/>

South Dakota

- State emergency management agency name: South Dakota Office of Emergency Management
- Link to state emergency management agency website: <http://oem.sd.gov/Default.asp>
- Link to website with state's statutes: <http://legis.state.sd.us/statutes/index.aspx>
- State Emergency Management Act: Title 33, Military Affairs, Chapter 15, Emergency Management
- Link to website for legislation: <http://legis.state.sd.us/index.aspx>

Tennessee

- State emergency management agency name: Tennessee Emergency Management Agency
- Link to state emergency management agency website: <http://www.tnema.org/>
- Link to website with state's statutes: <http://www.tennesseeanytime.org/laws/laws.html>
- State Emergency Management Act: Title 58, Military Affairs, Emergencies and Civil Defense, Chapter 2, Disasters, Emergencies, and Civil Defense
- Link to website for legislation: <http://www.legislature.state.tn.us/>

Texas

- State emergency management agency name: Texas Governor's Division of Emergency Management
- Link to state emergency management agency website: <http://www.txdps.state.tx.us/dem/pages/index.htm>
- Link to website with state's statutes: <http://www.statutes.legis.state.tx.us/>
- State Emergency Management Act: Government Code, Chapter 418, Emergency Management
- Link to website for legislation: <http://www.capitol.state.tx.us/>

Utah

- State emergency management agency name: Utah Department of Public Safety, Division of Homeland Security
- Link to state emergency management agency website: <http://des.utah.gov/>
- Link to website with state's statutes: <http://www.utah.gov/government/utahlaws.html>
- State Emergency Management Act: Title 53, Public Safety Code, Chapter 2, Emergency Management
- Link to website for legislation: <http://www.le.state.ut.us/>

Vermont

- State emergency management agency name: Vermont Emergency Management
- Link to state emergency management agency website: <http://www.dps.state.vt.us/vem/>
- Link to website with state's statutes: <http://www.leg.state.vt.us/statutes/statutes2.htm>
- State Emergency Management Act: Title 20, Internal Security and Public Safety, Chapter 1, Civil Defense Generally
- Link to website for legislation: <http://www.leg.state.vt.us/>

Virginia

- State emergency management agency name: Virginia Department of Emergency Management
- Link to state emergency management agency website: <http://www.vaemergency.com/>
- Link to website with state's statutes: <http://legis.state.va.us/Laws/CodeofVa.htm>
- State Emergency Management Act: Title 44, Military and Emergency Laws, Chapter 3.2, Emergency Services and Disaster Law
- Link to website for legislation: <http://legis.state.va.us/>

Washington

- State emergency management agency name: Washington Military Department Emergency Management Division
- Link to state emergency management agency website: <http://emd.wa.gov/>
- Link to website with state's statutes: <http://apps.leg.wa.gov/rcw/>
- State Emergency Management Act: Title 38, Militia and Military Affairs, Chapter 38.52, Emergency Management
- Link to website for legislation: <http://www.leg.wa.gov/legislature/>

West Virginia

- State emergency management agency name: West Virginia Division of Homeland Security and Emergency Management
- Link to state emergency management agency website: <http://www.wvdhsem.gov/>
- Link to website with state's statutes: <http://www.legis.state.wv.us/WVCODE/Code.cfm>
- State Emergency Management Act: Chapter 15, Public Safety, Article 5, Division of Homeland Security and Emergency Management
- Link to website for legislation: <http://www.legis.state.wv.us/>

Wisconsin

- State emergency management agency name: Wisconsin Emergency Management
- Link to state emergency management agency website: <http://emergencymanagement.wi.gov/>
- Link to website with state's statutes: <http://www.legis.state.wi.us/rsb/stats.html>
- State Emergency Management Act: Chapter 166, Emergency Management
- Link to website for legislation: <http://www.legis.state.wi.us/>

Wyoming

- State emergency management agency name: Wyoming Office of Homeland Security
- Link to state emergency management agency website: <http://wyohomelandsecurity.state.wy.us/>
- Link to website with state's statutes: <http://legisweb.state.wy.us/titles/statutes.htm>
- State Emergency Management Act: Title 19, Defense Forces and Affairs, Chapter 13, Wyoming of Office of Homeland Security
- Link to website for legislation: <http://legisweb.state.wy.us/>

Appendix 4: Finding Statutes and Bills Online

Statutes

Statutes are current laws that have been passed by the state's legislature and signed by its governor. Statutory law is already in effect. Bills are proposed laws that have not yet been passed by the legislature and signed by the governor. Bills are important to include in research because they show what the statutory law may become. When researching the law online, it is important to distinguish between statutes and bills.

Statutory Websites

Most states provide access to their statutes through a link from their website. The page will usually say that it provides access to the state's code, statutes, or laws. In most cases, the website for a state's current statutes can be located by:

- Using the direct links provided in the *Links to State Statutory and Legislative Websites*. While these links were current at the time the Guide was released, links change from time to time, so it may be necessary to conduct your own search.
- Searching the Internet for the state's official website (search for the state's name or the state's name and the word statutes) and looking on the home page for a link to statutes, code, or laws.

Legislative Websites

Most states also provide a link from their home page to their legislature's web page. The legislature's web page provides information about:

- Bills that have been introduced but have not yet passed, including each bill's status, text, and sponsors
- Bills that have been passed by the legislature

Links to the state legislatures' websites are also included in *Links to State Statutory and Legislative Websites*. A state legislature's website is an important supplement to the statutory website because it often provides the most current information about changes to the state's law. It can take several months for the state's online statutes to reflect changes made by the legislature. New legislation is usually posted more promptly on the legislature's website.

Many states post a disclaimer on their statutory website, warning that the website may not be current or accurate, or that the statutes posted are an unofficial version. Be sure to obtain advice from a legal professional before taking any action based on the statutes you find on the state's website.

Federal Legislation

Federal statutes and legislation can be accessed online through the GPO Access website, <http://www.gpoaccess.gov/>. For federal statutes, look under the U.S. Code link. Federal statutes and legislation are also accessible through the Library of Congress' website, Thomas, at <http://thomas.loc.gov/>.

General Guide to Finding Statutes

The following tools are often available to find statutes on a state's website:

- Search for keywords
 - Statutes as a whole: The state statutory website may provide a search function for words likely to be in the statute. The search function is similar to searching the Internet for a topic of interest: type in the words that describe the topic and the search function should provide relevant results.
 - Particular statutes: It may also be possible to search lengthy statutory text for an important term by using the find function, which is under Edit in the internet browser toolbar; or other find tools available for the software being used.
- Browse (read through) the table of contents for the state's statutes, looking for topics where volunteer liability protection is likely to be located. Browsing is similar to looking at a textbook table of contents to find a section of particular interest.
- Search for statutory numbers: Statutes are identified by section numbers for organizational purposes. If a statute's number is available from another source—for example in a handout from a meeting—that number can be used to either search or browse the statutes.

Search functions may permit a search for more than one keyword at once, for example: volunteer, liability, immunity, and emergency. This type of search produces fewer but usually more specific results. However, the narrower results may exclude statutes that would be of interest. Note that search functions do not all work the same way. It is important to read the website's instructions for its search function before beginning. Suggested search terms for different topic areas are provided below. Alternative terms with similar meanings are separated by slash (/) marks.

Every State is Different

Every state organizes its statutes differently. Some states, like Texas and California, have a number of different codes not just one state code. Other states have titles that are not part of the statute number, which can

complicate the search, as the researcher tries to determine in which title a specific section is located. Be prepared for a learning curve.

Civil Liability

Civil liability protection for emergency management volunteers can be found in several different parts of state statutes. The most common locations are the state's emergency management act or in a Good Samaritan law. Governmental immunity under the state's tort claims act may be extended to emergency management volunteers through an emergency management or homeland security act.

To locate emergency management and homeland security statutes:

- Use the citations provided in *Links to State Statutory and Legislative Websites* for the emergency management acts in each state where one was located.
- Search for:
 - Emergency
 - Disaster
 - Military/military affairs/militia/civil defense/civil preparedness/defense
 - Law enforcement
 - Public safety/public health/health and safety

Results can be refined by combining one of the above terms with immunity or immune, liability or liable, or volunteer.

- Browse for:
 - Emergency management
 - Homeland security
 - Military/military affairs/militia/civil defense/civil preparedness/defense
 - Law enforcement
 - Public safety/public health/health and safety
 - Government
- Once the emergency management or homeland security act is identified, look or search for sections that refer to:
 - Volunteer
 - Emergency management worker
 - Disaster worker

-
- Liability/liable
 - Immunity/immune
 - Tort
 - Claims

To locate statutes relating to governmental immunity:

- Locate the state's emergency management or homeland security statutes, as described above, and look for references to immunity or liability of public entities, their employees and emergency or disaster workers during emergency management activities. Immunity may be provided within the emergency management or homeland security statute; or by providing emergency or disaster workers the same rights and immunities as public employees engaged in similar functions; or by referring to the section number of the state's tort claims act.
- Search or browse for:
 - Tort claims
 - Public employees
- If a statute providing immunity or other liability protection is identified, then look for:
 - Inclusion of emergency or disaster workers in the group protected by immunity
 - A section (including a definition) that treats volunteers as protected emergency or disaster workers for purpose of immunity.

To locate Good Samaritan acts and volunteer protection acts:

Good Samaritan and volunteer protection acts are often part of a state's statutes on courts or judicial remedies. They may also be included in state licensing statutes for certain types of licensed workers.

- Search for:
 - Good Samaritan
 - Volunteer
 - Civil procedure/civil remedies/civil practice/civil proceedings/civil actions/causes of action/actions/courts/judicial procedures/rights of action
 - Exemption from liability
 - Emergency medical
 - Professions/professionals
 - Health professionals
 - Public health

Results can be refined by combining one of the above terms with immunity or immune, liability or liable, or volunteer.

- Browse for:
 - Civil procedure/civil remedies
 - Courts
 - Professions/professionals/physician (or other professional group that is of specific interest)
 - Health and safety
 - Public health
 - Insurance/health security
- If a statute providing immunity or other liability protection is identified, then look for the requirements to be in the protected group as defined and the scope of protection provided.

Workers' Compensation

Workers' compensation for emergency management volunteers will likely be found either in the state's emergency management or homeland security act or in its workers' compensation statute. Workers' compensation statutes may be referred to by other names, which are likely to include the word industrial or labor in their title. The emergency management or homeland security act may incorporate by reference the protection provided to state or local government employees.

Locate emergency management and homeland security laws as described above in "Civil Liability."

- If a statute providing workers' compensation for emergency or disaster workers is identified, look for:
 - Language extending protection to *volunteer* emergency or disaster workers as well as those employed by a government.
 - A separate, more limited program for volunteer emergency or disaster workers.

To locate the state's workers' compensation act:

- Search for:
 - Workers' compensation
 - Labor/labor and industry/labor and employment
 - Industrial board/industries
- Browse for:
 - Workers' compensation

-
- Labor/labor and industry/labor and employment
 - Industrial board/industrial commission
 - If a statute providing workers' compensation or other injury, illness, or death benefits for emergency management or disaster workers is identified, then look for:
 - A definition of *employee* that includes *volunteer* emergency or disaster workers
 - A special section of the workers' compensation or similar statute for emergency or disaster workers, including volunteers.

Licenses, Certificates, and Permits

Statutory provisions that recognize out-of-state licenses, certificates, or permits or waive those requirements in an emergency will likely be found in an emergency management or homeland security act. Licenses for retired professionals who are volunteer emergency or disaster workers are likely to be found in the state licensing statute for that type of professional.

Locate emergency management and homeland security laws as described above in “Civil Liability.” Refine the search by including the term *license* in the search, or search or browse the statute for the word *license*.

To locate state licensing statutes:

- Search for:
 - Professions/professionals/specific name of a profession (architect, engineer, physician nurse, etc.)/professions and occupations
 - Licenses
- Browse for:
 - Licensure statutes for the affected professions and occupations.
- If a statute is found, look for:
 - Waiver of license requirements during emergencies or disasters.
 - Recognition of licenses from other jurisdictions during an emergency, and any limitations on that recognition.

Appendix 5: Additional Resources

Citizen Corps Volunteer Liability Project Current as of June 2009

Centers for Law & the Public's Health:

Home page, <http://www.publichealthlaw.net/>; other publications include:

The Turning Point Model State Public Health Act:

<http://www.publichealthlaw.net/ModelLaws/MSPHA.php>;

Hurricane Katrina and Rita Responses—Legal Lessons:

<http://www.publichealthlaw.net/Research/PDF/Katrina%20-%20Legal%20Lessons%20Learned.pdf>;

Model State Emergency Health Powers Act:

<http://www.publichealthlaw.net/ModelLaws/MSEHPA.php>.

Emergency Management Assistance Compact website: <http://www.emacweb.org/>.

Emergency System for Advance Registration of Volunteer Health Professionals: Legal and Regulatory Issues, draft report, May 2006: <http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf>.

GovTrack.us: A website that tracks legislative activity in the current U.S. Congress and will generate updates via email to those who register a specific area of interest; <http://www.govtrack.us>.

GPO Access: A free service of the U.S. Government Printing Office that provides electronic access to information produced by the federal government: <http://www.gpoaccess.gov/>.

Medical Reserve Corps Technical Assistance Series: Special Topics: Risk Management and Liability Basics for MRC Units, revised August 2006; [http://www.medicalreservecorps.gov/File/TASeries/5-1_Special_Topics_RiskMgmt_\(FINAL\).pdf](http://www.medicalreservecorps.gov/File/TASeries/5-1_Special_Topics_RiskMgmt_(FINAL).pdf).

National Voluntary Organizations Active in Disaster: NVOAD and its state VOADs coordinate planning efforts by voluntary organizations that are responding to disaster; <http://www.nvoad.org/>.

No Surprises: Harmonizing Risk and Reward in Volunteer Management. Herman, Melanie L. and Jackson, Peggy J., Nonprofit Risk Management Center, Washington, DC, 2004, <http://www.nonprofitrisk.org>.

Points of Light Institute: <http://www.pointsoflight.org/>.

Public/Private Legal Preparedness Initiative: The University of North Carolina at Chapel Hill Gillings School of Global Public Health’s project to eliminate the legal barriers that hinder collaboration between the private, nonprofit, and public sectors; <http://nciph.sph.unc.edu/law/>.

State Liability Laws for Charitable Organizations and Volunteers: Nonprofit Risk Management Center, Washington, DC, 2005. State-by-state summary of liability protection laws for general volunteers: <http://www.nonprofitrisk.org/library/state-liability.shtml>; and <http://nonprofitrisk.org/downloads/state-liability.pdf>.

Thomas: Library of Congress’ website that provides access to information about legislation pending before or passed by the U.S. Congress; <http://thomas.loc.gov/>.

University of North Texas Digital Library Congressional Research Services (CRS) Reports Page: CRS performs public policy research for members of Congress, their committees, and their staffs. CRS does not make its reports directly available to the public, but the University of North Texas is one of several sites that provide access to them online. The link to the CRS page of the University of North Texas digital library is: <http://digital.library.unt.edu/govdocs/crs/>. In 2004, CRS did a series of reports about homeland security statutory authorities in the U.S. The summary report is titled Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary. The CRS document number is RL32287. The summary report can be accessed at: <http://digital.library.unt.edu/govdocs/crs/data/2004/meta-crs-6566.tkl>. At the end of the summary report is a list of numbers for the Profile Reports created by CRS, each of which summarizes the statutory authorities for a jurisdiction (the fifty states, the District of Columbia, and the insular areas). These report numbers can be used to search the University of North Texas digital library CRS page for the full text of the report on states of specific interest.

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