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LIABILITY PROTECTION FOR CAPE MAY COUNTY MEDICAL RESERVE CORPS (MRC) VOLUNTEERS¹

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The Cape May County Department of Health provides general and professional liability coverage (*with some exceptions*) for Medical Reserve Corps (MRC) volunteers if they are acting within the scope and duties of the Department of Health. This coverage supplements federal and state volunteer protections, and is *in addition* to professional liability insurance maintained by licensed healthcare professionals. Coverage is provided for MRC volunteers to respond to public health emergencies; participate in preparedness training, drills, and exercises; and to assist the Department of Health with routine public health activities, i.e. health education, research, immunization clinics, etc. Coverage is maintained if MRC volunteers are deployed outside of Cape May County in an emergency.

Overview

Volunteers and the entities that recruit, deploy, and manage volunteers can be subject to liability. Volunteers are legally responsible for their own acts or omissions and can face civil tort liability or criminal penalty. Immunity is a legal protection against liability and may be asserted as a defense against liability claims. Providing liability protections to volunteers helps ensure that there are adequate numbers of volunteers to participate in emergency preparedness and response efforts.

General Liability

When acting within the scope and duties of the Department of Health, MRC volunteers are covered for bodily injury, property damage, personal, and advertising injury by the Department's general liability insurance policy.

Professional Liability

All licensed healthcare professionals are strongly encouraged to maintain their own professional liability insurance. When acting within the capacity and scope of their duties for the Department of Health, MRC professional healthcare volunteers (with the exception of intern, extern, resident, fellow, dental, osteopathic or medical doctor) will be covered under the Department's health care facility professional liability insurance policy. Physicians need their own professional liability coverage.

¹ The material set forth herein is intended as informational only. The content of this document has been reviewed generally by the Office of County Counsel and found to be an accurate summary of the law, but no portion of this document is intended as legal advice. If any volunteer has questions or concerns about their participation in the MRC and legal liability, he or she is advised to seek independent legal counsel. The Office of County Counsel cannot provide legal guidance to any individual MRC volunteer.

New Jersey Protections

Charitable immunity

New Jersey's charitable immunity law (N.J.S.A. 2A:53A-7 et seq.). Originally enacted in 1959, the law has been modified several times, most recently in 2006. One section of the immunity law (N.J.S.A. 2A:53A-7.1) provides that uncompensated volunteers, trustees and officers are not liable for damages related to their services on behalf of charitable non-profits, in cases of ordinary negligence. In no case does charitable immunity or trustee/volunteer immunity provide protection in cases of gross negligence or willful or wanton misconduct. Injuries resulting from motor vehicle accidents are not covered under the Charitable Immunity Act.

Emergency Health Powers Act

The New Jersey [Emergency Health Powers Act](#) of 2005 allows for the Governor to declare a public health emergency. In a declared public health emergency, this Act provides protection from liability for volunteers and employees of the state, counties, and municipalities for deaths, injuries, and property loss or damage occurring during a public health emergency; and deaths, injuries, and property loss or damage occurring during training and preparation exercises. The Act does not include cases of gross negligence, willful misconduct, or a crime or fraud.

Federal Protections

Volunteer Protection Act of 1997

At the federal level, the [1997 Volunteer Protection Act](#) (VPA) offers immunity from civil liability for volunteers serving nonprofit organizations or government entities, provided that: 1) the volunteer was acting within the scope of his/her responsibilities at the time of the incident; 2) the volunteer was appropriately licensed or certified to perform the type of service involved; and 3) the harm was not caused by an act of willful misconduct or conscious indifference to the safety of the persons involved. The Act also excludes harms caused by negligent operating of a motor vehicle.

Volunteers and the Health Insurance Portability and Accountability Act

The [Health Insurance Portability and Accountability Act \(HIPAA\) Privacy Rule](#) protects a patient's personal health information (PHI) that is held by covered entities. Covered entities, including health plans, healthcare clearinghouses, and most healthcare providers (e.g., volunteer health professionals, known as VHPs), may not use or disclose PHI except as permitted or required by HIPAA's privacy regulations. Permitted disclosures of PHI include (1) for treatment, payment, and healthcare operations, (2) to federal, state, and local health departments for the purpose of preventing and controlling disease as authorized by law, (3) to notify family of location, condition, and death of an individual, (4) for disaster relief purposes, (5) to prevent or lessen a serious threat to health or safety, (6) to law enforcement to locate a missing person, (7) to a medical examiner to identify a body, and (8) to a funeral director to carry out duties regarding the deceased. The HIPAA Privacy Rule remains in effect during emergencies unless the federal government suspends it.

Public Readiness and Emergency Preparedness Act

[The Public Readiness and Emergency Preparedness Act](#) (PREP Act) authorizes the Secretary of the Department of Health and Human Services (Secretary) to issue a declaration (PREP Act declaration) that provides immunity from tort liability (except for willful misconduct) for claims of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to diseases, threats and conditions determined by the Secretary to constitute a present, or credible risk of a future public health emergency to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of such countermeasures. A PREP Act declaration is specifically for the purpose of providing immunity from tort liability, and is different from, and not dependent on, other emergency declarations.

References:

- ASCE: American Society of Civil Engineers: <http://www.asce.org/Content.aspx?id=2147485430>
- Association of State and Territorial Health Officials: <http://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Volunteer-Toolkit/Volunteers-Liability-and-Liability-Protections-Fact-Sheet/>
- Center for Nonprofits: http://www.njnonprofits.org/ins_overview.html
- Emergency Health Powers Act, NJ Chapter Laws, P.L. 2005 ch. 222: http://www.njleg.state.nj.us/2004/Bills/PL05/222_.PDF.
- Public Readiness and Emergency Preparedness Act: <http://www.phe.gov/preparedness/legal/prepact/Pages/default.aspx>
- Summary of HIPAA Privacy Rule: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html>
- Volunteer Protection Act, 1997: <http://thomas.loc.gov/cgi-bin/bdquery/z?d105:H.R.911:>