



TABLE - LEGAL LIABILITY PROTECTIONS FOR EMERGENCY MEDICAL/PUBLIC HEALTH RESPONSES (as of February 20, 2017)

The table below highlights potential liability protections at the federal and state levels for different types of actors and entities involved in emergency response efforts during declared and non-declared emergency events. Please note that (1) this table does not provide legal advice and (2) listed protections vary greatly depending upon the situation and jurisdiction. Data are organized via the following columns:

- I. **Actors** – categorizing individuals or entities involved in emergency response;
- II. **Non-declaration Event** – listing potential liability protections at federal and state levels in events for which no emergency has been legally declared; and
- III. **Declared Emergency Event** – listing potential liability protections and immunities at the federal or state levels during a legally-declared emergency, disaster, public health emergency (or like terms).

Federal liability protections are based upon searches of available protections for specified actors. State-level laws provide illustrative examples of different types of protections. Application of these state laws depends on their existence in each jurisdiction (as discussed in the references). In addition, a number of cross-cutting legal protections may arise through Memorandums of Understanding (MOUs), malpractice insurance coverage, crisis standards of care, or other avenues.

For purposes of this table, licensed healthcare workers (HCW) are defined as persons licensed in the jurisdiction in which they are providing care, either through standard licensing processes or reciprocity. Non-licensed HCWs do not have active licenses in the jurisdictions in which they are providing care, but may be acting under authority of an emergency law or waiver. Volunteers are defined broadly to include volunteers of non-profits and governmental agencies providing varied health care or public health services, but not including self-deployed persons acting outside public response efforts. Employees are defined broadly to include healthcare workers as well as other types of responders.

Each liability protection listed in the table is preceded by 1 of 3 symbols related to the type or level of protection for applicable individuals or entities as follows:

-  - indicates that individuals or entities in jurisdictions with applicable laws meeting the statutory requirements are immune from civil liability;
-  - indicates that individuals or entities may only be partially protected or protections are subject to extensive state-based variations; or
-  - indicates that the legal protections are likely very limited in their scope.

Acronyms and Abbreviations

EMAC- Emergency Management Assistance Compact
 FTCA – Federal Tort Claims Act
 HCW – Healthcare worker
 MSEHPA – Model State Emergency Health Powers Act
 PREP Act – Public Readiness and Emergency Preparedness Act

UEVHPA – Uniform Emergency Volunteer Health Practitioners Act
 VPA – Volunteer Protection Act
 Comm. – Communicable
 Immun. – Immunity
 Sam. – Samaritan

I. Actor	II. Non-Declaration Event		III. Declared Emergency Event	
	Federal	State	Federal	State
Individuals				
Licensed HCW	<ul style="list-style-type: none"> ✔ PREP Act¹ ⚠ FTCA² ⚠ Public Health Service³ 	<ul style="list-style-type: none"> ⚠ Good Sam. Laws⁴ ⚠ State VPAs⁵ ⚠ State Tort Claims Acts⁶ 	<ul style="list-style-type: none"> ✔ PREP Act¹ ⚠ FTCA² ⚠ Public Health Service³ ⚠ State Tort Claims Acts ⚠ National Disaster Medical System⁷ ⚠ Volunteer Medical Reserve Corps⁸ 	<ul style="list-style-type: none"> ✔ EMAC⁹ ✔ MSEHPA¹⁰ ✔ Comm. Disease Control Acts¹¹ ✔ Emergency Services Acts¹² ⚠ Good Sam. Laws⁴ ⚠ State VPAs⁵ ⚠ UEVHPA¹³
Non-licensed HCW	<ul style="list-style-type: none"> ✔ PREP Act¹ 	<ul style="list-style-type: none"> ⚠ Good Sam. Laws⁴ 	<ul style="list-style-type: none"> ✔ PREP Act¹ 	<ul style="list-style-type: none"> ✔ Retired/Inactive Licensee Laws¹⁴ ⚠ Good Sam. Laws⁴ ⚠ MSEHPA¹⁰
Volunteer	<ul style="list-style-type: none"> ✔ PREP Act¹ ⚠ Fed. VPA¹⁵ 	<ul style="list-style-type: none"> ✔ Immun. For First Responders¹⁶ ⚠ Good Sam. Laws⁴ ⚠ State VPAs⁵ 	<ul style="list-style-type: none"> ✔ PREP Act¹ ⚠ Fed. VPA¹⁵ 	<ul style="list-style-type: none"> ✔ Immun. for First Responders¹⁶ ✔ EMAC⁹ ✔ Emergency Services Acts¹² ✔ Disaster Preparedness Laws¹⁷ ⚠ Good Sam. Laws⁴ ⚠ State VPAs⁵ ⚠ MSEHPA¹⁰ ⚠ UEVHPA¹³
Private sector Employee	<ul style="list-style-type: none"> ✔ PREP Act¹ 	<ul style="list-style-type: none"> ⚠ Good Sam. Laws⁴ 	<ul style="list-style-type: none"> ✔ PREP Act¹ 	<ul style="list-style-type: none"> ✔ MSEHPA¹⁰ ✔ Comm. Disease Control Acts¹⁸ ✔ Emergency Management Acts¹⁹ ✔ Emergency Services Acts¹² ⚠ Good Sam. Laws⁴
Public Employee	<ul style="list-style-type: none"> ✔ PREP Act¹ ⚠ FTCA² ⚠ Qualified Immun.²⁰ 	<ul style="list-style-type: none"> ✔ Immun. for First Responders¹⁶ ⚠ Good Sam. Laws⁴ ⚠ State Tort Claims Acts⁶ 	<ul style="list-style-type: none"> ✔ PREP Act¹ ⚠ Qualified Immun.²⁰ ⚠ FTCA² ⚠ State Tort Claims Acts⁶ 	<ul style="list-style-type: none"> ✔ EMAC²¹ ✔ MSEHPA¹⁰ ✔ Emergency Management Acts¹⁹ ✔ Comm. Disease Control Acts¹¹ ✔ Emergency Services Acts¹² ✔ Immun. For First Responders¹⁶ ✔ Disaster Preparedness Laws¹⁷ ⚠ State Tort Claims Acts⁶ ⚠ Good Sam. Laws⁴

I. Actor	II. Non-Declaration Event		III. Declared Emergency Event	
	Federal	State	Federal	State
Entities				
Gov't Agency	<ul style="list-style-type: none"> ✓ PREP Act¹ ✓ The Stafford Act²² ⚠ FTCA² ⚠ Sovereign Immun.²³ 	<ul style="list-style-type: none"> ✓ Immun. for First Responder Agencies¹⁶ ⚠ Sovereign Immun.²³ 	<ul style="list-style-type: none"> ✓ PREP Act¹ ✓ The Stafford Act²² ⚠ FTCA² ⚠ Sovereign Immun.²³ 	<ul style="list-style-type: none"> ✓ EMAC²⁴ ✓ MSEHPA¹⁰ ✓ Qualified Immun.²⁵ ✓ Emergency Management Acts¹⁹ ✓ Emergency Services Acts¹² ✓ Disaster Preparedness Laws¹⁷ ⚠ Sovereign Immun.²³ ● UEVHPA¹³
Hospital/ Health Care Entity	<ul style="list-style-type: none"> ✓ PREP Act¹ ⚠ FTCA² 	<ul style="list-style-type: none"> ✓ Actions via Government Contracts²⁶ ● Common Law Charitable Immun.²⁷ ⚠ Good Sam. Laws²⁸ 	<ul style="list-style-type: none"> ✓ PREP Act¹ ⚠ FTCA² 	<ul style="list-style-type: none"> ✓ Comm. Disease Control Acts¹⁸ ✓ Emergency Services Acts¹² ✓ Actions via Government Contracts²⁶ ● UEVHPA¹³ ● Common Law Charitable Immun.²⁹
Non-profit Entity	<ul style="list-style-type: none"> ✓ PREP Act¹ 	<ul style="list-style-type: none"> ● Common Law Charitable Immun.³⁰ 	<ul style="list-style-type: none"> ✓ PREP Act¹ 	<ul style="list-style-type: none"> ✓ MSEHPA¹⁰ ✓ Emergency Management Acts³¹ ✓ Comm. Disease Control Acts¹⁸ ✓ Emergency Services Acts¹² ● UEVHPA¹³
For-profit Entity	<ul style="list-style-type: none"> ✓ PREP Act¹ 		<ul style="list-style-type: none"> ✓ PREP Act¹ 	<ul style="list-style-type: none"> ✓ MSEHPA¹⁰ ✓ Emergency Management Acts³² ✓ Comm. Disease Control Acts¹⁸ ✓ Emergency Services Acts¹² ● UEVHPA¹³

SUPPORTERS



Robert Wood Johnson Foundation

This document was developed by Kim Weidenaar, J.D., Deputy Director, and James G. Hodge, Jr., J.D., LL.M., Director, Network for Public Health Law - Western Region Office at the Sandra Day O'Connor College of Law, Arizona State University, with research and formatting assistance from student legal researchers, Sean Aten, Ashley Repka, and Alex Hess, and input from national, state, and local public health attorneys and officials.

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation. The Network provides information and technical assistance on issues related to public health. *Legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.*

- ¹ 42 U.S.C.A. § 247d-6d (2013). The PREP Act provides immunity from suits and liability related to covered countermeasures to all covered entities and persons that manufacture, distribute, prescribe, administer, or dispense countermeasures, and program planners, as well as their agents, officials, and employees, absent willful misconduct. To trigger the PREP Act's protections, the Secretary of the Department of Health and Human Services must first make a "determination" that a disease or other health condition or other threat to health constitutes a public health emergency, or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency. Then, the Secretary may make a "declaration" recommending the manufacture, testing, development, distribution, administration, or use of one or more covered countermeasures, and stating that immunity from liability is in effect with respect to the activities so recommended.
- ² 28 U.S.C.A. §§ 2671–2680. FTCA immunizes federal government employees acting within the scope of their employment from tort liability for claims arising out of the performance or nonperformance of a discretionary function. FTCA also provides liability protections for certain federally-funded health centers and their employees under Federally Supported Health Centers Assistance Acts (FSHCAA) of 1992 and 1995.
- ³ 42 U.S.C.A. § 233. Public Health Service officers and employees are indemnified by the U.S. government for civil claims arising out of the performance of their service duties.
- ⁴ Good Samaritan laws vary considerably by state and provide liability protections to different individuals in specific circumstances, often those providing spontaneous, uncompensated care at the scene of an emergency. However, some states provide broader protections. For example, under Georgia's GA. CODE ANN. § 31-11-8, any person (including EMS personnel and licensed HCWs) who provides emergency care shall not be liable for damages if they receive no remuneration and provide care in good faith.
- ⁵ Texas' TEX. CIV. PRAC. & REM. CODE § 84.004(c) provides immunity for HCWs serving as a volunteer for a charitable organization if a claim is based on an act or omission made in the course of volunteer health care services, the services provided are within the volunteer's license and the patient signs a written statement acknowledging that care is being provided voluntarily. Florida's FLA. STAT. § 768.1355 shields from liability all volunteers performing any service for any nonprofit organization or governmental entity when acting in good faith within the scope of any official duties performed. Pennsylvania's 42 PA. STAT. ANN. § 8332.4 provides broad liability protections to volunteers working for a nonprofit or government agency. Arizona's A.R.S. § 12-982 immunizes volunteers for acts performed in good faith and within the scope of their official functions and duties for a nonprofit, hospital, or governmental entity.
- ⁶ States provide varying degrees of immunity or indemnification for public employees and officials, often through state tort claims acts. Arkansas' ARK. CODE ANN. § 19-10-305 provides state officers and employees immunity from liability and suit for claims arising for actions taken during the scope of their employment.
- ⁷ 42 U.S.C.A. § 300hh-11(c)(2). For liability purposes, individuals appointed under the National Disaster Medical System and acting under the appointment are considered employees of the Public Health Service while performing their medical duties as described in 42 U.S.C.A. § 233 (note 3).
- ⁸ 42 U.S.C.A. § 300hh-15(h). During a federally-declared public health emergency, individuals may be appointed by the Secretary of Health and Human Services as intermittent disaster-relief personnel of the Volunteer Medical Reserve Corps. In such a case, they are considered employees of the Public Health Service and are protected under the Federal Tort Claims Act.
- ⁹ Some states may deem volunteers to be employees for liability purposes, extending coverage under EMAC to all volunteers deployed under the compact. See, .e.g., UTAH CODE ANN. § 26-49-301(2).
- ¹⁰ As of 2011, 40 states and DC had enacted legislation based on MSEHPA with 24 enacting § 804 of MSEHPA providing immunity for state and private actors. For example, Louisiana's LA. REV. STAT. ANN. § 29:771(B)(2)(c) provides that during a public health emergency, governmental entities, their agents and officials, and individuals, entities, and employees of entities that render assistance or advice at the request of a government entity or perform acts under a contract or at the direction of a governmental entity are not liable for damage and injury resulting from emergency response efforts. See also New Jersey's N.J. Stat. Ann. § 26:13-19 including public entity volunteers.
- ¹¹ Arizona's ARIZ. REV. STAT. § 36-790 provides civil and criminal immunity to HCWs participating in quarantine or isolation procedures if they act in good faith.
- ¹² CAL. GOV. CODE § 8659. California Emergency Services Act protects hospitals, physicians, pharmacists, and dentists from civil liability for services provided during a state of war, emergency, or local emergency at the express or implied request of a state or local official or agency.

-
- ¹³ Nevada's NEV. REV. STAT. § 415A.270 adopts the UEVHPA and protects from liability all Volunteer Health Professionals who provide health services, absent willful, wanton, grossly negligent, reckless, or criminal conduct. UEVHPA protects the entities hosting or deploying volunteers from vicarious liability.
- ¹⁴ WYO. STAT. ANN. § 35-4-114. "Health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer" are immune from liability arising from compliance with instructions of the state health officer during a declared public health emergency.
- ¹⁵ Federal Volunteer Protection Act, 42 U.S.C. § 14503(a) (2000), provides liability protection to uncompensated volunteers for nonprofit organizations and governmental entities for acts within volunteer's scope of duty and licensure (if applicable). Liability protections do not apply to "willful or criminal misconduct, gross negligence, [or] reckless conduct" or harm caused by operation of motor vehicles. New Hampshire has also opted out of the Federal VPA.
- ¹⁶ California's CAL. HEALTH & SAFETY CODE § 1799.106 provides that individuals (firefighters, police officers, other law enforcement, EMTs, and RNs and public agencies employing them) who provide emergency medical services are not liable for actions performed in good faith. Delaware's DEL. CODE ANN. tit. 16, § 6801(a) provides liability protections to members or employees of nonprofit volunteer or governmental ambulance, rescue, or emergency units.
- ¹⁷ New York's N.Y. EXEC. LAW § 29-b(1) provides state, county, and city emergency management directors, personnel, and their agents, and disaster emergency response personnel (including agencies, public officers, employees, and volunteers) the same broad immunities as participants in civil defense drills during official disaster preparedness and response efforts.
- ¹⁸ Maine's ME. REV. STAT. ANN. tit. 22, § 816(1) provides immunity from civil liability for private institutions and their employees or agents as if they were a state agency or employees for actions related to the control of communicable diseases during a declared extreme public health emergency.
- ¹⁹ New Jersey's N.J. STAT. ANN. § 26:13-19 provides that public entities and their agents, employees, and volunteers are granted civil immunity for injuries caused in connection with a public health emergency. Immunity also applies to persons or private entities that own property used in response to a public health emergency. Missouri's MO. ANN. STAT. § 44.023 immunizes volunteer architects, professional engineers, construction contractors, equipment dealers and others as needed during an emergency.
- ²⁰ Qualified Immunity provides liability protections for official actions of federal and state officials so long as (1) they do not violate constitutional rights and (2) concerning employees, to the extent that they are performing discretionary functions. See *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Davis v. Scherer*, 468 U.S. 183, 191 (1984).
- ²¹ Responding state officers or employees rendering aid to another state pursuant to EMAC are not liable on account of any act or omission in good faith. See New Jersey's N.J. STAT. ANN. § 38A:20-5.
- ²² Pub. L. No. 93-288, 42 U.S.C. § 5148, provides that the federal government is not liable for claims based upon the exercise or the failure to exercise a discretionary function or duty of a federal agency or employee in carrying out the Stafford Act.
- ²³ While governments were historically immune from liability, most jurisdictions have waived these protections. Some, however, retain immunity to an extent. Arizona's ARIZ. REV. STAT. § 12-820.01 provides that public entities are not liable for the acts or omissions of its employees when determining a fundamental governmental policy.
- ²⁴ California's CAL. GOV. CODE § 8660 provides immunity to other states and their employees providing aid pursuant to an interstate agreement or compact during an emergency.
- ²⁵ California's CAL. GOV. CODE § 8655 provides immunity to the state and its political subdivisions for discretionary functions performed in furtherance of the California Emergency Services Act.
- ²⁶ Hawaii's law, HAW. REV. STAT. § 325-20, allows the state's Director of Health to contract with health care entities to control disease epidemics. Health care providers and facilities acting under contract are immune for injuries resulting from their actions, absent willful misconduct.
- ²⁷ Texas' TEX. CIV. PRAC. & REM. CODE § 84.0065 limits the amount of damages hospitals may be held liable for to \$500,000 per action.
- ²⁸ Florida's FLA. STAT. ANN. § 768.13 Good Samaritan Law provides immunity from civil liability for injuries sustained from medical care or failure to provide such care for hospitals that provide emergency care pursuant to the Emergency Medical Treatment and Active Labor Act (EMTALA).
- ²⁹ Texas' TEX. CIV. PRAC. & REM. CODE § 84.0065 limits the amount of damages hospitals may be held liable for to \$500,000 per action.
- ³⁰ New Jersey's N.J. STAT. ANN. § 2A:53A-7 provides limited immunity to nonprofit corporations, societies or associations organized exclusively for religious, charitable, educational, from suits by beneficiaries of the organization.

³¹ North Carolina's N.C. GEN. STAT. § 166A-19.60 provides immunity to non-profits acting pursuant to the N.C. Emergency Management Act if compensation is no greater than expenses and the organization is working either during a state of emergency or during emergency preparedness training.

³² Delaware's DEL. CODE ANN. tit. 20, § 3144 (2004) provides civil immunity during a state of emergency to private persons, firms and corporation, and their employees and agents who provide assistance or advice at the request of the State or its political subdivisions.