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HRSA Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) – Legal and Regulatory Issues

NOTICE OF RIGHTS AND RESPONSIBILITIES OF VOLUNTEER HEALTH PROFESSIONALS UNDER ESAR-VHP

As a volunteer health professional (VHP), you have certain rights and responsibilities associated with your volunteer duties under the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP). This notice describes those rights and responsibilities, which may differ based on the laws and regulations of the state in which you are registered. Please contact your state or territorial ESAR-VHP administrator for more specific information.

Disclaimer. This Notice is not meant to provide specific legal guidance or advice to any volunteer. Rather, this Notice serves as a helpful tool for assessing your rights and responsibilities within your specific jurisdiction. Legal advice on the issues discussed varies depending on state or local laws, the nature of the grantee, and specific circumstances involved. *Please contact your state or territorial ESAR-VHP legal advisor or your attorney for specific legal guidance.*

Emergency Declarations. State laws empower government officials to declare an emergency in response to disasters and public health crises. Once an emergency is declared, the legal obligations and protections available to a VHP may change. ESAR-VHP may be activated by the declaration of a general state of emergency (or disaster) or a public health emergency, or both, depending on your specific jurisdiction.

The legal obligations and protections applicable to a VHP may differ depending on whether a general emergency, disaster, or public health emergency has been declared. ESAR-VHP may also be activated under additional emergency situations or in response to disasters that do not involve a government declaration of emergency.

Licensure, Credentialing and Privileging.

Each state has its own system of professional regulation that requires health professionals to obtain a license or certification to practice within the state. Many states laws and health care entity policies require VHPs to obtain credentials and privileges prior to practicing. As a VHP, you are responsible for maintaining current licensure, certification, registration, credentialing, and privileging status and to promptly advise your ESAR-VHP administrator of any changes in your status or contact information.

During an emergency, a VHP may be asked to provide volunteer health services in a state other than the one in which he or she is licensed, credentialed, or privileged. In these circumstances, the VHP will be able to provide professional health services if the law in the other state recognizes the VHP's out-of-state license or credential (reciprocity) or temporarily suspends the licensure, credentialing, or privileging requirements for VHPs (waiver).

Various laws, compacts, agreements, and policies allow for waiver or reciprocity of licensure, credentialing, and privileging for VHPs assisting across state lines. Some states also authorize limited license reciprocity for certain health professions even when an emergency has not been declared.

Civil Liability. Civil liability refers to the ability of patients to seek compensation for wrongful or accidental harms resulting from the delivery of medical services or care. While VHPs may potentially face civil liability for negligently providing medical care and treatment during an emergency, many laws offer protection from potential liability.

Federal, state, and local laws offer VHPs various degrees of protection, or immunity, from civil liability. Limits on civil liability for volunteers may be found in (1) volunteer protection statutes or (2) governmental immunity provisions (if the volunteer is a government employee or agent). During emergency situations, additional laws may authorize immunity for volunteers, including (3) Good Samaritan statutes; (4) emergency statutes; and (5) mutual aid compacts. Your state or territorial ESAR-VHP legal advisor may have additional, specific legal guidance on liability issues.

Criminal Liability. Responsibility for the criminal acts of volunteers is based on specific elements of the crime as defined by state or federal law. Under state and federal laws, immunity from criminal liability is more limited than civil liability. State laws do not explicitly offer immunity from criminal acts. Most state statutes that provide for immunity from civil liability do not extend this immunity to criminal acts or to conduct that is willful, malicious, reckless, wanton, or intentional. Many acts that would trigger criminal liability may fall within these criteria.

Workers' Compensation. Workers' compensation is a government administered system that provides limited benefits to victims

of work-related injuries or death, regardless of fault. Each state (and the federal government) has workers' compensation systems that require work-related injuries to be reported and compensated in accordance within specific legal rules. The application of workers' compensation benefits to VHPs (who may be injured in response to emergencies) depends on the laws of the jurisdiction where the injury occurs. Workers' compensation laws only cover "employees" and thus typically would exclude unpaid volunteers or gratuitous workers. Some states may legislatively extend explicit coverage to certain volunteer workers. Absent such provisions, volunteers are likely excluded from coverage.

Right to Reemployment. Through ESAR-VHP, VHPs may be asked to vacate temporarily their regular employment to respond to emergency needs in another facility or jurisdiction. Some states have enacted laws that provide reemployment protection to individuals providing emergency response services. For example, individuals who are members of federal governmental emergency response teams, such as a Disaster Management Assistance Team or Disaster Assistance and Response Team composed of civilian medical personnel, are given job, seniority and wage protection in accordance with federal law when they are deployed for disaster responses. The Uniformed Services Employment and Reemployment Rights Act (USERRA) also provides reemployment protection to non-career members of the uniformed service who are called up for duty.

The employer's obligations to provide a VHP with reemployment upon the VHP's return to work differ depending on the amount of time that the VHP is absent, whether doing so would impose an undue hardship on the employer, and whether the employer's circumstances have changed so as to make reemployment impossible or unreasonable. Likewise, the VHP may be obligated to notify the employer of the length of the VHP's absence and the VHP's intention to return to work.

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