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**Greater New York Hospital Association**


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Kenneth E. Raske, President

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September  
Twenty-one  
2005

ML-163

TO: Chief Executive Officers

FROM: Kenneth E. Raske, President 

RE: Legal Protections Provided to Medical Volunteers in Relief Efforts

I am writing to provide a general update on the Federal government's coordination of medical personnel wishing to volunteer their services in response to Hurricane Katrina and to provide information on the legal liabilities and protections available for those medical and other volunteers who may be involved, now or in the future, in relief efforts.

**Update on Federal Government's Call for Medical Volunteers**

We recognize that there has been great frustration with respect to the volunteer process because many of you and your staffs have offered to assist in the medical response to the devastation caused by Hurricane Katrina, but very few people have been deployed from our area. In this regard, many individual practitioners have registered to volunteer through the Web site set up by the U.S. Department of Health and Human Services (HHS), and many of the area's larger hospitals and hospital systems have offered to field the medical teams initially sought by HHS to staff a projected 40 medical shelters throughout the affected region. The medical shelter teams were initially to include approximately 100 specified types of personnel, preferably from the same hospital or system so that they would be able to work together efficiently as soon as they were deployed. In order to facilitate member interest in this regard, GNYHA had organized regular conference calls with HHS to prepare for the possible deployment of such teams.

However, HHS's plans to set up medical shelters have evolved as the situation has changed over time, such that the teams that might be called, if at all, will in all likelihood be smaller than the initial 100-person teams that had been planned and will also have a somewhat different composition depending on the needs of the area. As of the writing of this member letter bulletin, HHS is indicating on its Web site that it is no longer accepting individual medical and relief worker volunteer applications, though it is still "interested in identifying groups (of at least five health care professionals or relief personnel from a single employer) who are interested in deploying as a group."

## Overview of Legal and Liability Protections for Volunteers

Although it is possible that very few volunteers will be needed as events unfold, GNYHA nevertheless thought it useful to provide you with an overview of the legal and liability protections afforded to individuals who are credentialed as volunteers either through the Federal or state Emergency Medical Assistance Compact (EMAC) processes. We note that the following represents our understanding of the process based on conversations with HHS and the State of New York. To the extent that any of the information requires updating, we will provide that information to you.

### Federal Actions and Legal Protections for Volunteers

HHS has indicated that volunteer healthcare workers who go through the Federal credentialing process and are deployed by the Federal government will be considered “non-paid temporary Federal employees” and will function as HHS employees. As such, they will be entitled to the following limited protections and rights.

1. **Liability Protection** – Temporary employees will be provided liability coverage by the Federal government under the Federal Tort Claims Act (FTCA). Briefly, this means that a temporary employee will not be individually liable for actions taken in the scope of his/her temporary HHS employment, as defined by the law of the state in which the employment duties are performed. Obviously, any criminal or otherwise inappropriate activities would likely not be protected under the FTCA, because they would not be considered part of the scope of employment. Also, this protection extends only to activities that are specifically required by the government employer. Should a temporary employee working in the affected region decide to do personal volunteer work during his or her off hours, this service would not be covered by the FTCA.
2. **Worker’s Compensation** – Temporary employees will be accorded protection under the Federal Employees Compensation Act (FECA). Under FECA, temporary employees are provided compensation benefits for any work-related injuries or illnesses, and their surviving dependents are provided compensation benefits if a work-related injury or illness results in death. FECA is an exclusive remedy.
3. **Assistance with Expenses** – As part of their volunteer service, temporary employees will receive travel expenses and a per diem stipend for authorized daily expenses. We understand that those who volunteer to staff the medical shelters were also slated to receive food and lodging, albeit spartan. There will be no salary or other compensation provided to these temporary employees.
4. **Employment Rights** – The temporary employee status being extended to medical volunteers may not exceed 30 days. The temporary service may be extended for an additional 30 days, but it is not to exceed a total of 60 days in any 12-month period. See 5 CFR §213.312(i)(2). Medical personnel and hospital administrators should consider these limits as they prepare for possible deployments.

Please note that temporary Federal employees should not lose their status as hospital employees during their volunteer service. We understand that their employers should still accord the volunteers all regular employee benefits during that time period. HHS has indicated that it is the decision of the individual hospital as to whether to pay the volunteer's salary during his or her volunteer stint. However, we understand that hospitals should not identify such employees as "volunteers" during their volunteer tours; payroll records should *not* indicate that the worker was deployed for hurricane relief efforts. At least one wage and hour attorney has suggested that hospitals place volunteers on paid leave during their tours of service, but hospitals should consult with their own employment counsel.

Please remember that these rights extend only to individuals who become temporary unpaid Federal workers by going through the credentialing process explained in GNYHA's member letter bulletin no. 158, dated September 9, 2005. Volunteers who opt to act independently will not be afforded these or any other Federal protections. Moreover, the rights described above are temporary and attach only for actions performed within the scope of the volunteer's service. Finally, the temporary employees granted these rights are not considered employees of HHS for any other purposes. See <https://volunteer.ccrf.hhs.gov/> for additional information.

### **Guarantee of Staff Return**

Hospitals have questioned whether they can have a guarantee of their staff returning to work within a reasonable period of time. HHS has most recently stated that it requires a volunteer period of no less than 14 days (due to logistical, training, and other issues) but no longer than 30 days. HHS is leaving the actual length of the duty to the discretion of the volunteer teams in recognition of the fact that the hospital may depend on the relatively prompt return of the team. We would remind hospitals of the 30-day limitation on liability protections described above as they prepare to dispatch teams. In any event, travel tickets issued to volunteers will be open-ended.

### **State EMAC Process and State Legal Protections**

In addition to the Federal system discussed above, some states are coordinating volunteer resources – and offering legal protections – through their Emergency Management Assistance Compacts (EMACs) with other states, which permit the sharing of assets among states during emergencies. Although New York State's controlling legislation limits the application of its EMAC to dispatch only state and local governmental assets, the State Department of Health (DOH) and the State Emergency Management Office (SEMO) have developed a process that allows private volunteers to be treated as state assets for EMAC purposes via a memorandum of understanding between SEMO and the hospital. These volunteers can thus be dispatched and legally protected by New York State laws.

We understand that the protections offered under New York State's EMAC process differs only slightly from the Federal protections discussed above. Specifically, the recipient EMAC state (likely Louisiana or Mississippi in this case) will recognize the professional license of any

volunteer dispatched through New York's system. In addition, volunteers will be granted the civil liability and worker's compensation protections offered to New York State workers. The recipient EMAC state is also required to afford New York's volunteers the same duties, rights, and privileges as are given its own emergency forces. Significantly, the New York State plan will also reimburse providers for certain expenses related to the Katrina relief effort. Reimbursement is not part of the Federal plan.

Nonetheless, the State plan lacks one significant operational element: it does not typically arrange transportation, food, or lodging for volunteers. Medical personnel are thus required to make their own plans and accommodations and may voucher the State for their expenses afterwards. Considering the decimation wrought by Hurricane Katrina in some areas, it may be logistically difficult for volunteers sent to certain locations to find accommodations. The Federal government has indicated that it would likely provide tents and food and possibly transportation to volunteers dispatched through the EMAC system to particularly austere environments; however, providing such accommodations is not typically part of the New York State EMAC process.

We note that the State of New Jersey is also relying on its EMAC process to dispatch volunteers. Please see the following New Jersey State Web page for additional information: [http://www.state.nj.us/health/er/katrina\\_medicalhelp.shtml](http://www.state.nj.us/health/er/katrina_medicalhelp.shtml).

In addition, for a discussion of the legal protections available to volunteer health professionals in Alabama, Louisiana, and Mississippi under their respective state laws, please see [www.publichealthlaw.net/Research/Katrina.htm](http://www.publichealthlaw.net/Research/Katrina.htm) or access this information through the GNYHA website at <http://www.gnyha.org/eprc/general/katrina/>. This link includes a chart of the three states' key legal and regulatory citations concerning such protections. For clarification purposes, this chart outlines the protections that might be afforded to volunteers that do not go through either the Federal credentialing process or the New York State EMAC process but receive protection under the host state's laws.

For a more technical legal treatment of some the issues discussed in this member letter bulletin and related points, you may wish to visit the Web site of the Center for Law and the Public's Health at Georgetown and John Hopkins Universities through the following link: <http://www.publichealthlaw.net/Research/Katrina.htm>.

If you have any questions about the information contained in this letter, please contact Deborah Brown (212-258-5314 or [brown@gnyha.org](mailto:brown@gnyha.org)) or Susan Waltman (212-504-5405 or [waltman@gnyha.org](mailto:waltman@gnyha.org)).

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