

Updated: August, 2012

Frequently Asked Questions (FAQ) About Legal and Regulatory Issues Pertaining to the *MI Volunteer Registry*

Disclaimer: *This FAQ is for informational purposes only. Nothing within this FAQ is meant to provide specific legal guidance or advice to any person. Rather, this FAQ is meant to serve as an assessment tool for individuals who are considering participation in the MI Volunteer Registry (www.MIVolunteerRegistry.org). Readers should consult with their own attorneys about these laws and their applicability to particular situations or organizations.*

Introduction: The *MI Volunteer Registry* (Registry) is a system for the advance registration of individuals who volunteer to provide services during a public health or medical emergency, disaster, training or exercise. The objectives of this system are to:

- Identify a qualified and competent volunteer force
- Enable efficient and effective emergency or disaster operations
- Allow sharing of volunteers across state lines
- Establish clear protections for volunteers, hospitals and others

The Registry is an electronic database that enables authorities to perform a volunteer background check through the Michigan Internet Criminal History Access Tool (ICHAT) and primary source verify a volunteer's professional licenses, credentials, accreditations, and hospital privileges. The Registry is the State of Michigan's contribution toward a national response system authorized by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 USC § 247d-7b).

Joining the Registry does not obligate a person to serve or impose any personal liability; neither does it confer any benefits. Local, regional, or state authorized personnel will utilize the Registry to identify, contact, and deploy volunteers as needed. By registering in advance of a disaster or emergency, volunteers will expedite their potential role in emergency response.

Legal authority, liability and protection for individual volunteers and organizations utilizing volunteers will vary depending on a variety of factors, including but not limited to:

- The jurisdictions involved
- Whether or not there is a declared state of disaster or state of emergency
- The volunteer's profession
- The volunteer's affiliation, privileges, and/or employment status
- To whom and in what setting the volunteer is providing services

Volunteers often serve in a limited capacity, for a limited period of time, and in places or positions in which they may not normally practice. Therefore, volunteers should be aware of federal, state and local emergency powers and how these powers may affect their liability, licensure and credentialing. Volunteers should not self-deploy to disaster areas. For their own protection, it is imperative that volunteers work through governmental agencies or recognized nonprofit disaster relief organizations.

Q1. Are there provisions for compensating me for time lost from work or other expenses?

A1. The Registry is intended for volunteers who are willing to render aid or perform services on a temporary basis without pay or any benefits. Some employers support employee volunteer and community service activities. Check with your own employer for details.

Q2. Are there provisions for workers' compensation benefits?

A2. The first option would be to discuss with your current employer their willingness to support your volunteer activity as part of their organizational community mission by providing you workers' compensation coverage. This should be a clear discussion on the MI Volunteer Registry, the potential to volunteer and its impact to your routine work schedule and any burdens or hardships your volunteerism may cause the company/or your employer. MI Volunteer Registry activities may be requested outside of normal work hours, location or facility.

If your employer is unwilling or unable to provide you workers' compensation coverage, Michigan has recently amended its Workers' Compensation Act- 2012 PA 83, MCL 418.161(1)(o) to include volunteer activity, provided that activity is consistent with the described process for registration and deployment during a public health or medical emergency disaster, training or exercise.

In addition, many private health care practitioners carry their own insurances, including workers' compensation. Therefore, check with your carrier(s) to see if that coverage includes activities associated with volunteerism.

An individual registered with and deployed through the MI Volunteer Registry shall be considered an employee of the state when engaged in the performance of duties agreed upon through registration on this specific site. This would include duties related to training and exercising.

IMPORTANT: This coverage is only applicable to **volunteer activity** sanctioned by and deployed through an authorized administrator on the MI Volunteer Registry.

Q3. What protection might be available for Michigan volunteers against liability lawsuits arising out of the volunteer work?

A3. Volunteers may be protected from civil liability through the following statutes. However, they do not protect against harm caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

Governmental Immunity Act, MCL 691.1401et seq.– While acting on behalf of a governmental agency, a volunteer is immune from tort liability if the volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority, and the governmental agency is engaged in the exercise or discharge of a governmental function. This Act does not provide immunity for medical treatment or care to a patient, with limited exceptions. However, other laws discussed in this section may apply to provide protection from liability for medical care.

Liability of Certain Persons for Emergency Care, MCL 691.1501et seq.–

Commonly referred to as **The Good Samaritan Act**, this statute

- Protects certain licensed health professionals from civil liability when providing

emergency care without compensation at the scene of an emergency, provided there was no provider/patient relationship established before the emergency

- Covers physicians, physician's assistants, registered professional nurses, and licensed practical nurses responding to a life threatening emergency in a hospital or other licensed medical care facility when the health professional's duties do not require responding to such emergencies
- Protects individuals assisting the government with a search and rescue operation

Emergency Management Act, MCL 30.401 et seq. – This statute provides general immunity from liability for **Disaster Relief Forces** while on duty. A person who renders services at the express or implied request of a state official, agency, county, local coordinator, or executive body is considered an authorized disaster relief worker. During a declared state of disaster, additional protections are provided to certain health professionals who render services as part of a government authorized response. Moreover, the Director of the Michigan State Police may issue a directive relieving volunteers of liability except for gross negligence.

Public Health Code, MCL 333.1101 et seq. – Several sections of the Public Health Code grant immunity from liability:

- **Health Department** – The director or an employee or representative of the state health department or a local health department is not personally liable for damages sustained in the performance of departmental functions, except for wanton and willful misconduct (MCL 333.2228 and 333.2465).
- **Immunization Program** – When the state health department approves a mass immunization program; health personnel employed by a governmental entity, or a volunteer authorized to participate by the director or a local health officer, cannot be held liable except for gross negligence or willful and wanton misconduct (MCL 333.9203).
- **Emergency Medical Services Personnel** – Immunity from liability is provided except for gross negligence or willful misconduct (MCL 333.20965).

Volunteer Protection Act of 1997(Public Law 105-19, 42 USC § 14501) – Volunteers may also be protected from civil liability under this federal law.

Public Readiness and Emergency Preparedness (PREP) Act, Part of the Public Health Service Act, 42 USC § 247d-6d - Provides broad and strong protection to individuals and entities that are engaged in activities related to the use of covered pharmaceutical countermeasures. This includes, for example, entities and individuals involved with manufacturing, labeling, distributing, packaging, marketing, selling, purchasing, donating, dispensing, prescribing, administering, licensing, or using of such countermeasures. Requires a PREP Act Declaration from the Secretary of Department of Health & Human Services. To be protected from liability, would need to act consistent with the terms of the PREP Act declaration. PREP Act declarations, and FAQs that explain the PREP Act, can be found at <http://www.phe.gov/Preparedness/legal/prepact/Pages/prepqa.aspx>. Protection under a PREP Act declaration pre-empts state law, which means state law cannot provide less protection for entities or individuals covered by a PREP Act declaration. Permits a lawsuit to be filed in the U.S. District Court for the District of Columbia for “willful misconduct”, which the plaintiff must prove by “clear and convincing evidence.”

For Government Employees:

Interstate Emergency Management Assistance Compact (EMAC), MCL 3.991 et seq. – Michigan is a member of this multi-state compact, which is commonly referred to as EMAC. Individuals who are deployed to other states under the compact are immune from civil liability except for willful misconduct, gross negligence, or recklessness. Deployment under the compact is through the EMAC Coordinator at the Michigan State Police Emergency Management Division.

Q4. Are there any eligibility restrictions for volunteering?

A4. All individuals willing to volunteer in support of a public health or medical emergency are encouraged to enroll in the Registry. When a volunteer's services are needed, an authorized Registry administrator will contact the volunteer to inquire about availability, willingness to serve, and physical nature of the intended deployment. Depending on the circumstances, conditions may require certain skills, abilities, or other criteria.

Q5. What precautions are being taken by the State to protect health volunteers against disclosure of personal information contained in the MI Volunteer Registry?

A5. Authorized Registry system administrators are the only individuals to have access to your information. Registry volunteer profile information is not open to the public. The system is designed to provide unique privileged access for specific professions and qualifications following an emergency incident. This includes the ability to limit administrator access rights to local teams and certain program affiliations (i.e., Medical Reserve Corps).

Q6. Is the State able to provide malpractice insurance to volunteers?

A6. No. Any individual who volunteers should carry their own malpractice insurance. Individuals can check to see if their primary employer has any provisions to provide this benefit for volunteer services.

Additional Resources:

MI Volunteer Registry Website: www.MIVolunteerRegistry.org

Medical Reserve Corps: <http://www.medicalreservecorps.gov>

Michigan Department of Community Health (MDCH), Office of Public Health Preparedness (OPHP): www.michigan.gov/ophp.

U.S. Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Preparedness and Response (ASPR): <http://www.phe.gov/preparedness/Pages/default.aspx>

U.S. Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Preparedness and Response (ASPR), Emergency System for Preparedness and Response (ESAR-VHP) Employer page: <http://www.phe.gov/esarvhp/pages/employers.aspx>