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TO: I-SERV Program
Iowa Department of Public Health
FROM: Heather Adams, Assistant Attorney General
RE: I-SERV Volunteer Liability
DATE: September 14, 2009

You have asked whether Iowa law provides protections from civil liability for health care providers who volunteer for the Iowa Statewide Emergency Registry of Volunteers (I-SERV). I-SERV is a program administered by the Iowa Department of Public Health (IDPH) which registers health care professionals willing to provide volunteer services during a large scale disaster or public health disaster or emergency. I-SERV is part of a federal effort to coordinate and assemble volunteers to provide assistance to victims of a disaster or emergency by providing supplemental staffing and aid.

Iowa law contains several provisions which provide immunity protections for health care providers who volunteer for I-SERV and provide health care to disaster victims. These laws generally protect volunteers who serve on behalf of the state or IDPH from liability for any health care or assistance they provide in good faith. I have included the specific text of the laws and a short description of each statute below:

I. Iowa Code section 135.147: Immunity for Emergency Aid

1. A person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of the public health disaster shall not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.
2. The immunities provided in this section shall not apply to any person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, whose act or omission caused in whole or in part the public health disaster and who would otherwise be liable therefore.

This law provides immunity from civil liability to persons who provide care or assistance to victims of a public health disaster at the request of or under the direction of IDPH, provided that they do so in good faith and unless such acts or omissions constitute recklessness. A public health disaster is defined in Iowa Code section 135.140(6) and means a state of disaster emergency proclaimed by the governor which involves an imminent threat of illness or health condition caused by a large scale event such as terrorism or the appearance of a novel virus and which poses a high probability of deaths, disabilities, or significant harm to a large number of persons in the affected population.

This statute would provide immunity protections for I-SERV volunteers who provide medical care or assistance in good faith during a public health disaster. This immunity protection is applicable only during a governor declared public health disaster.

II. Iowa Code section 669.24: State Volunteers

A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "compensation" does not include payments to reimburse a person for expenses.

This law provides that persons who volunteer for the state shall not be personally liable for claims based on acts performed while the person was performing duties on behalf of the state, excluding acts or omissions which involve intentional misconduct or a knowing violation of the law or transactions from which the person derives an improper personal benefit.

This statute would provide immunity protections for I-SERV volunteers who provide care or assistance under the I-SERV program absent intentional misconduct or knowing law violation. This immunity protection applies regardless of whether or not a public health disaster has been declared by the governor.

III. Iowa Code section 613.17: Emergency Assistance in an Accident (amended in 2009 by SF 280)

A person, who in good faith renders emergency care or assistance without compensation, shall not be liable for any civil damages for acts or omissions occurring at the place of an emergency or accident

or while the person is in transit to or from the emergency or accident or while the person is at or being moved to or from an emergency shelter unless such acts or omissions constitute recklessness or willful or wanton misconduct. An emergency includes but is not limited to a disaster as defined in section 29C.2 or the period of time immediately following a disaster for which the governor has issued a proclamation of a disaster emergency pursuant to section 29C.6.

This law, as recently amended, is Iowa's Good Samaritan statute and provides immunity from civil liability for persons who provide emergency care or assistance on a volunteer basis at the scene of an emergency – including the scene of a disaster as proclaimed by the governor – provided that such care is rendered in good faith and does not constitute recklessness or willful or wanton misconduct.

This statute would provide immunity protections for I-SERV volunteers who provide emergency care or assistance to victims of an emergency in good faith. This immunity protection applies regardless of whether or not a public health disaster has been declared by the governor.

IV. IV. Iowa Code section 29C.21, Article IV

The following provision is contained in Iowa's Emergency Management Assistance Compact (EMAC), a compact entered into by all 50 states to provide for mutual assistance between the states in managing emergencies and disasters. Article VI -- Liability. Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Hence, if a volunteer of I-SERV is deployed by the State of Iowa under EMAC to assist disaster victims in another state, such person is considered an agent of the requesting state for tort liability and immunity protections.

V. Conclusion. In sum, Iowa law affords ample immunity protections for volunteer health care providers who register and serve under the I-SERV program, provided that the volunteers act in good faith and do not perform their duties recklessly or with intentional disregard of the law.

Volunteers should note that this memorandum is legal advice to the Department of Public Health, but does not constitute legal advice to them personally. Volunteers with questions about their potential liability for serving in this program should be encouraged to contact their legal counsel. Finally, volunteers should note that while they may be protected by the above immunity provisions, the State of Iowa will not defend and indemnify them as state employees.