



## **NEW JERSEY LAW REVISION COMMISSION**

### **Final Report Relating to**

## **NEW JERSEY EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT**

**September 19, 2013**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.  
Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries, to:

Laura C. Tharney, Esq., Executive Director  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [lct@njlrc.org](mailto:lct@njlrc.org)  
Web site: <http://www.njlrc.org>

## Introduction

UEVHPA was drafted by the Uniform Law Commission (ULC), (formerly known as the National Conference of Commissioners on Uniform State Laws), in an expedited manner after hurricanes Katrina and Rita which struck within weeks of each other in 2005.

According to the ULC website, fourteen states have adopted the Act (Arkansas, Colorado, Illinois, Indiana, Kentucky, Louisiana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, Texas, and Utah) and two others (Mississippi and Pennsylvania) introduced it in 2013. The District of Columbia and the United States Virgin Islands have also adopted the Act.<sup>1</sup>

Prior to the drafting of the UEVHPA, a number of states had enacted emergency management laws that permitted the waiver or modification, in emergencies, of licensure standards for health practitioners. The vast majority of the states had also enacted the Emergency Management Assistance Compact (“EMAC”). EMAC allows for the deployment of licensed health practitioners employed by state and local governments to jurisdictions in which they are not licensed and allows them to provide emergency services there.

The federal government supplemented the state law provisions with language allowing licensed health practitioners that it employed on either a permanent or temporary basis to respond to disasters and emergencies without complying with the state professional licensing requirements in the locations where their services are utilized. 10 *U.S.C.* 1094(d)(1). In addition, federal law established two systems to facilitate the use of private sector health practitioners in response to emergencies, particularly those mobilized by charitable non-governmental organizations that are active in disasters. Those two systems are: (1) the formation of the Medical Reserve Corps to recruit, train and promote deployment of health practitioners in emergencies; and (2) the funding of state emergency advance registration systems designed to recruit and register health practitioners before an emergency occurred. Unfortunately, neither of those federal programs necessarily results in interstate recognition of licenses issued to volunteer health practitioners.

When hurricanes Katrina and Rita struck, the response to the resulting emergency conditions highlighted deficiencies in the federal and state systems designed to facilitate the

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<sup>1</sup> In addition, according to the ULC website, the Act has been endorsed by the following entities: American Association for Marriage and Family Therapy, American College of Emergency Physicians, American College of Nurse-Midwives, American Public Health Association, American Nurses Association, American Red Cross, American Society for the Prevention of Cruelty to Animals, Center for Biosecurity of the University of Pittsburgh Medical Center, Colorado Public Health Association, Community Health Planning and Policy Development Section, APHA, Health Equity Associates, LLC, Kentucky Public Health Association, National Association of Emergency Medical Technicians, National Association of County & City Health Officials, National Association of State EMS Officials, National Funeral Directors Association, New York State Public Health Association, North Dakota Public Health Association, Pennsylvania Public Health Association, Public Health Association of New York City, Public Entity Risk Institute, Trust for America’s Health, Tulsa City-County Health Department United Way of America, Wisconsin Public Health Association.

interstate use of volunteer health practitioners. While federal and state law recognized the need for interstate licensure reciprocity, no comprehensive system existed to link the various public and private programs. The hurricanes, as other large-scale emergencies could, caused a breakdown of communications, which lead to uncoordinated and ineffective response efforts. In addition, the deployment of many volunteer health practitioners was delayed by the absence of information regarding the operation of state declarations of emergency. Concerns regarding exposure to civil liability and the availability of workers' compensation protection also inhibited the recruitment and deployment of volunteers.

An electronic report posted to the website of the Metropolitan Medical Response System program, part of the federal Department of Homeland Security (DHS), summarizes the types of issues that arose:

Volunteer physicians are pouring in to care for the sick, but red tape is keeping hundreds of others from caring for Hurricane Katrina survivors. The North Carolina mobile hospital waiting to help...offered impressive state-of-the-art medical care. It was developed with millions of tax dollars through the Office of Homeland Security after 9-11. With capacity for 113 beds, it is designed to handle disasters and mass casualties. It travels in a convoy that includes two 53-foot trailers, which on Sunday afternoon was parked on a gravel lot 70 miles north of New Orleans because Louisiana officials for several days would not let them deploy to the flooded city. 'We have tried so hard to do the right thing. It took us 30 hours to get here,' said one of the frustrated surgeons. That government officials can't straighten out the mess and get them assigned to a relief effort now that they're just a few miles away 'is just mind-boggling,' he said.

*Uniform Emergency Volunteer Health Practitioners Act*, Prefatory Note, page 6.

The response efforts associated with hurricanes Katrina and Rita demonstrated that, in the absence of national standards, the federal and state systems available were inadequate and complicated the use of volunteer health practitioners for both the receiving and the deploying states.

The ULC Drafting Committee was advised by most of the national groups and organizations that helped deploy health practitioners during the hurricane relief efforts, as well as representatives of the National Emergency Management Association, the National Governors' Association, the Association of State and Territorial Health Officials, the American Public Health Association, the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities, and various sections and committees of the American Bar Association. The major policy objectives of the Committee were as follows:

- Make volunteer health practitioners available for rapid deployment in response to emergency declarations without awaiting affirmative actions on the part of host states, while allowing those host states control over the volunteer health practitioners within their borders.
- Protect public health and safety by requiring, before deployment, that volunteers

register with public or private systems able to confirm that they are properly licensed and in good standing and to communicating this information to host states' governments and entities utilizing the services of volunteers.

- Allow volunteers to register with proven governmental or private organization systems located throughout the country, rather than requiring registration in the affected host state, and facilitate the use of the various different registration systems developed and used by public and private agencies.
- Alleviate confusion about the types of services that may be provided by volunteer health practitioners, by requiring volunteers to (1) limit their practice to activities for which they are licensed, properly trained, and qualified to perform and (2) conform to scope-of-practice authorizations and restrictions imposed by the host states, disaster response agencies and organizations, and host entities.
- Regulate the activities of volunteer health practitioners by vesting authority over out-of-state volunteers in the licensing boards and agencies of host jurisdictions, while also requiring the reporting of unprofessional conduct by host states to licensing jurisdictions.
- Require host entities using volunteer health practitioners to coordinate their activities with local agencies to the extent and in the manner otherwise required by state law.
- Address whether and to what extent volunteer health practitioners and entities deploying, registering, and using them are responsible for civil claims based on a practitioner's act or omission in providing health or veterinary services (Section 11).
- Determine whether and to what extent volunteer health practitioners should receive workers' compensation benefits in the event of injury or death while providing such services (Section 12).

During the course of preparing a Final Report, additional entities whose interests are impacted by the Draft Act were identified and contacted to allow the opportunity for comment. The following is text of the Draft Final and the comments thereto – changes to the text and comments in order to update the names of various State entities for accuracy are not noted by ~~strikeout~~ or underlining below.

In the public sector, the following entities were asked for comment on this project: (1) Office of the Governor (since EMAC currently vests the Governor with power that UEVHPA would delegate, in part, to the New Jersey State Board of Medical Examiners); (2) New Jersey State Board of Medical Examiners; (3) New Jersey Department of Health; (4) New Jersey Board of Nursing; (5) New Jersey Department of Labor and Workforce Development; (6) New Jersey Division of Workers' Compensation; (7) New Jersey State Board of Veterinary Medical

Examiners; (8) New Jersey Board of Pharmacy; (9) New Jersey State Board of Mortuary Science; and (10) the Office of the Attorney General.

The following private sector entities were likewise asked for comment: (1) New Jersey Association of Osteopathic Physicians and Surgeons; (2) New Jersey State Nurses Association; (3) New Jersey Veterinary Medicine Association; (4) New Jersey Hospital Association; (5) New Jersey Physicians; (6) Association of Emergency Physicians; (7) New Jersey Chapter of the American College of Emergency Physicians; (8) American Medical Association; (9) American Nurses Association; (10) American Veterinary Medical Association; and (11) New Jersey State Bar Association.

## **Draft Act**

### **Section 1. Short Title**

This Act may be cited as the New Jersey Emergency Volunteer Health Practitioners Act.

#### **COMMENT**

This section removes “Uniform” from the title of the act and replaces it with “New Jersey” as an indication that there are changes from the text of the Uniform Act.

Comments specific to particular sections of the Act are included below in the comment sections following those sections. Support for the Act generally, however, was provided by the New Jersey Chapter of the American College of Emergency Physicians. A representative of the organization suggested that the act was well-written and encompassed the concerns of that organization with regard to things like liability and workers compensation. Other comments, from the New Jersey State Nurses Association, the American Veterinary Medical Association, and the New Jersey Veterinary Medical Association are reflected below.

### **Section 2. Definitions**

In this Act:

a. “Disaster relief organization” means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(1) is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the New Jersey Office of Emergency Management; or

(2) regularly plans and conducts its activities in coordination with an agency of the federal government or the New Jersey Department of Health.

b. “Emergency” means an event or condition that is an emergency, disaster, incident of bioterrorism, emergency epidemic, pandemic influenza, or other public health emergency under *N.J.S. 26:13-1 et seq.*, the Emergency Health Powers Act.

c. “Emergency declaration” means a declaration of emergency issued by a person authorized to do so under the laws of this state, a political subdivision of this state, or a municipality or other local government within this state, or under the laws of the United States.

d. “Emergency Management Assistance Compact” means the interstate compact approved by Congress by Public Law No. 104-321, 110 Stat. 3877 and presently codified at *N.J.S. 38A:20-5*.

e. “Entity” means a person other than an individual.

f. “Health facility” means an entity licensed under the laws of this or another state to provide health or veterinary services.

g. “Health practitioner” means an individual licensed under the laws of this or another state to provide health or veterinary services.

h. “Health services” means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(1) the following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(B) counseling, assessment, procedures, or other services;

(2) sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(3) funeral, cremation, cemetery, or other mortuary services.

i. “Host entity” means an entity operating in New Jersey which uses volunteer health practitioners to respond to an emergency.

j. “License” means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of New Jersey to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.

k. “Person” means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

l. “Scope of practice” means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner’s services are rendered, including any conditions imposed by the licensing authority.

m. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

n. “Veterinary services” means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(1) assessment, diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, device, equipment, surgery, ~~or~~ therapy, or other procedure;

(2) use of a procedure for reproductive management; and

(3) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

o. “Volunteer health practitioner” means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in New Jersey, unless the practitioner is not a resident of New Jersey and is employed by a disaster relief organization providing services in New Jersey while an emergency declaration is in effect.

#### COMMENT

This section is substantially identical to Section 2 of the Uniform Act.

This section includes the statutory citation for the Emergency Management Assistance Compact (“EMAC”), which has been adopted in all 50 states, and cross-references *N.J.S. 26:13-1 et seq.*, the Emergency Health Powers Act, for the definition of “emergency.” Under *N.J.S. 26:13-2*, a “public health emergency” means an occurrence or imminent threat of an occurrence that:

- a. is caused or is reasonably believed to be caused by any of the following: (1) bioterrorism or an accidental release of one or more biological agents; (2) the appearance of a novel or previously controlled or eradicated biological agent; (3) a natural disaster; (4) a chemical attack or accidental release of toxic chemicals; or (5) a nuclear attack or nuclear accident; and
- b. poses a high probability of any of the following harms: (1) a large number of deaths, illness or injury in the affected population; (2) a large number of serious or long-term impairments in the affected population; or (3) exposure to a biological agent or chemical that poses a significant risk of substantial future harm to a large number of people in the affected population.

This definition may be read expansively to include disasters that do not clearly fall within the scope Emergency Health Powers Act’s definition, including pandemics of influenza and other diseases that are not necessarily the result of “biological agents.” Louisiana, Colorado, and Arkansas have all interpreted the definition of disaster expansively. These states include both natural disasters reflected in the Emergency Health Power’s Act and influenza outbreaks.

The Office of Emergency Management was inserted in subsection a.(1), because that office, along with the Department of Health, included in subsection a.(2), coordinates health emergencies in New Jersey. See *N.J.S. 26:13-3*.

The difference between an individual and an entity in the Act is that an individual is a volunteer health practitioner while an entity may include any public or private legally recognized type of person, but does not include an individual. Thus, the term entity does not include individuals so as to distinguish the term “health facility” from the term “health practitioner.”

The term “health services” is broadly defined, based on a similar definition of the term from the HIPAA Privacy Rule, 45 *C.F.R.* 160.103, to include those services provided by volunteer health practitioners that relate to the health or death of individuals or populations and that are necessary to respond to an emergency. They include direct patient health services, public health services, provision of pharmaceutical products, and mortuary services for the deceased. On an individual level, health services include transportation, diagnosis, treatment, and care for

injuries, illness, diseases, or pain related to physical or mental impairments. On the population level, health services may include the identification of injuries and diseases, and an understanding of the etiology, prevalence, and incidence of diseases, for groups or members within the population. The term does not include services that do not provide direct health benefits to individuals or populations. For example, ancillary services (*e.g.*, administrative tasks, medical record keeping, transportation of medical supplies) are not health services for purposes of this act.

“Health facility” and “health practitioner” are defined as including both human and animal services. “Health services”, however, is tailored to include only services provided to human recipients. A commenter suggested including a reference to animals in this section, but the “veterinary services” definition seems to cover the provision of care to animals. Instead, additional language was added to the definition of “veterinary services” in an effort to make it mirror, as closely and appropriately as possible, the scope of services included in the “health services” definition.

The term “scope of practice” is used to define the extent of the authorization provided to a volunteer health practitioner to provide health or veterinary services during an emergency. Scope of practice may be established by laws, regulations or policies established by licensure boards or other regulatory agencies of the state in which a practitioner is licensed and primarily engages in practice. Scope of practice also includes any conditions that may be imposed on the practitioner’s authorization to practice, including instances where state law recognizes the existence of a license but declares practice privileges to be “inactive.” The term is defined by reference to the laws of the state in which the principal part of a practitioner’s services are provided to establish a single standard applicable to practitioners licensed to practice in multiple states. This act defers to relevant state laws to determine whether a practitioner with an inactive license may serve as a volunteer health practitioner. To the extent the law of the state in which an individual is licensed and primarily engages in practice allows a practitioner with an inactive license to practice, either generally, only during emergencies, or only in a volunteer capacity, such an individual may practice in a “host state” consistent with the requirements of this uniform law. On the other hand, if the law of the state in which an individual is licensed only allows an individual with an inactive license to practice if the license is renewed or reactivated (typically by satisfying continuing education requirements and paying additional registration fees), then the individual may only function as a volunteer health practitioner following the renewal or activation of the license.

A “volunteer health practitioner” is an individual who voluntarily provides health or veterinary services during a declared emergency. Unlike many existing federal and state legal definitions of volunteers that require the individual act without compensation, this definition and the Uniform Act contain no such requirement. The volunteer status of a health practitioner is not compromised by compensation awarded to the practitioner prior to, during the course of, or subsequent to the declared emergency. Such compensation, however, must not arise from a preexisting employment relationship with a host entity or affiliate unless the practitioner does not reside in the state in which the emergency is declared and is employed by a disaster relief organization providing health or veterinary services in that state while an emergency declaration is in effect. This definition differs from many legal definitions of “volunteer” that often characterize a volunteer as an individual who does not receive compensation for services. The federal Volunteer Protection Act (VPA) affords volunteers various protections (including from civil liability), but they cannot be compensated beyond reimbursement for expenses incurred or minimal compensation. *See* 42 U.S.C. § 14505(6). For purposes of this act, compensation outside an employment relationship with a host entity is inconsequential in establishing whether an individual is or is not a volunteer. The determining factor is that the volunteer is acting freely in choosing to provide health or veterinary services in emergency circumstances. This definition expands the pool of potential volunteer health practitioners who may enjoy the protections of this act to those who may be compensated in some way.

Part of the justification for a more expansive view of voluntarism relates to the positive effects of compensation to support volunteers during emergencies. Many prospective volunteer health practitioners are licensed individuals working in existing health facilities. They may seek to volunteer knowing that their existing employers will continue to compensate them even while they are away. The volunteers may be able to use their sick or vacation days for this purpose, or their employers may simply allow them to volunteer without using these benefits. Some disaster relief organizations may provide some nominal sums to volunteer health practitioners to



support their efforts. Compensation in these or other instances encourages certain individuals, who may not otherwise be able to act, to involve themselves in relief efforts.

For the purposes of protection from civil liability, the Commission considered distinguishing between volunteers who received compensation and those who did not and ultimately chose not to distinguish between uncompensated volunteers and those who are compensated.

Statutory references within the statute are not followed by “as amended” in light of the language contained in N.J.S. 1:1-3.3.

### **Section 3. Applicability to Volunteer Health Practitioners**

This Act applies to volunteer health practitioners registered with a registration system in the state in which they are licensed to practice that complies with Section 5 and who provide health or veterinary services in New Jersey for a host entity while an emergency declaration is in effect.

#### **COMMENT**

This section is generally similar to Section 3 of the Uniform Act. “New Jersey” was inserted to replace “this state” and the phrase “in the state in which they are licensed to practice” was added to eliminate any ambiguity about where such practitioners shall register.

Under existing state and local laws, an emergency is initiated with its declaration (as determined in accordance with existing state or local laws) and is terminated usually upon subsequent proclamation by an authorized state or local agency or official. The legal landscape for responding to natural disasters, public health threats, or other exigencies changes instantly with the declaration of a state of emergency. Accommodations must be made to ensure the efficient deployment and use of volunteer health practitioners to meet surge capacity in existing health facilities, emergency shelters, or other places where health or veterinary services are needed. This section authorizes volunteer health practitioners to provide health or veterinary services for the duration of the emergency and must be interpreted *in pari materia* with the other provisions of this act. As a result, this section only authorizes volunteer health practitioners to provide health or veterinary services in the state if all of the other requirements of the act are satisfied, such as registration, compliance with scope of practice limitations, and compliance with any modifications or restrictions imposed by the host state or host entity during an emergency.

This Act applies only during the declared emergency, and thus a state that wants to invoke its provisions in anticipation of an impending disaster so that volunteer health practitioners are more readily available when the disaster occurs must declare an emergency under laws of the state other than this act.

### **Section 4. Regulation of Services During Emergency**

a. While an emergency declaration is in effect, the Department of Health, State Board of Medical Examiners, Board of Nursing, State Board of Veterinary Medical Examiners, Board of Pharmacy, State Board of Mortuary Science, or, if the appropriate entity is not available, the Governor, may limit, restrict, or otherwise regulate:

- (1) the duration of practice by volunteer health practitioners;
- (2) the geographical areas in which volunteer health practitioners may practice;

(3) the types of volunteer health practitioners who may practice; and

(4) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

b. An order issued pursuant to subsection a. of this section may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the New Jersey Administrative Code.

c. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) consult and coordinate its activities with the Department of Health, and, as appropriate, the State Board of Medical Examiners, the Board of Nursing, the Board of Pharmacy, the State Board of Mortuary Science, or the State Board of Veterinary Medical Examiners to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) comply with any laws other than this act relating to the management of emergency health or veterinary services, including *N.J.S. 26:13-1 et seq.*, the Emergency Health Powers Act, except as provided in Section 6 subsection c. below.

#### COMMENT

This section is substantially similar to Section 4 of the Uniform Act. The names of the main regulatory agencies of health practitioners were inserted as the agencies that would be coordinating the regulation of the volunteers. The phrase “or, if the appropriate entity is not available, the Governor” was added to subsection a. to permit the Governor, who has expanded powers during a state of emergency, to administer the Act if, due to a breakdown in communication or an extreme catastrophe, the other named entities are not able to do so.

The approach taken by this Act to authorize the use of volunteer health practitioners following any emergency declaration, unless otherwise ordered pursuant to Section 4a. or 8c., is intended to create a system that can function autonomously even when communications are disrupted or when public officials are forced to dedicate their time and attention to more pressing matters than coordinating volunteer health practitioners. This approach is consistent with many current disaster management plans which rely upon the deployment of resources by critical non-governmental organizations without a specific order, directive or request from government agencies. During the response to Hurricane Katrina, medical and public health professionals had to improvise and use their own initiative because efforts to deploy them from staging areas were extremely time-consuming and failed to adequately get them to areas where their services were most needed. *The Federal Response to Hurricane Katrina: Lessons Learned* 46 (The White House, February 2006).

The provisions of the Uniform Act presumptively allowing volunteer health practitioners to respond to emergencies unless directed otherwise are carefully balanced by the provisions of Section 4c. which (1) require volunteer health practitioners to work through local “host entities” and (2) mandate host entities to consult and coordinate their activities with the agency(ies) responsible for managing the emergency response to ensure that all volunteer health practitioners are being used in an efficient and effective manner. Subsection c.(1) is intended to encourage host entities to utilize the services of volunteer health practitioners in concert and to discourage host entities and the volunteers that provide care under them from acting pursuant to their own judgments where such judgments may conflict with the objectives as set forth by the appropriate government agency. Under subsection c.(2), host entities must adhere to all laws relating to the management of emergency health or veterinary services. This caveat builds upon subsection c.(1) by setting the initial parameters of conduct during the emergency response. Namely, the laws relating to the management of health or veterinary services in the host state shall govern unless they are modified or restricted by the appropriate state agency(ies) pursuant to Section 8. This act is not intended, however, to govern or control the extent to which host entities must utilize volunteer health practitioners under the

direction and control of local emergency management agencies. Instead, it defers decisions regarding the extent with which emergency management services are coordinated and controlled to the other laws made applicable to host entities and volunteer health practitioners by subsection c.(2).

It is the understanding of Commission Staff that New Jersey is the only state in the nation to require criminal background checks for its health practitioners. This requirement would arguably, if unaddressed, impact the operation of the Act. Subsection c.(2) was modified from the Uniform Act to address this issue.

## **Section 5. Volunteer Health Practitioner Registration Systems**

a. To qualify as a volunteer health practitioner registration system, a system must:

(1) accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

(3) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this Act; and

(4) meet one of the following conditions:

(A) be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the Department of Health and Human Services under Section 319I of the Public Health Services Act, 42 *U.S.C.* 247d-7b;

(B) be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to Section 2801 of the Public Health Services Act, 42 *U.S.C.* 300hh;

(C) be operated by a:

(i) disaster relief organization;

(ii) licensing board;

(iii) national or regional association of licensing boards or health practitioners;

(iv) health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or

(v) governmental entity; or

(D) be designated by the Department of Health as a registration system for purposes of this Act.

b. While an emergency declaration is in effect, the Department of Health, the State Board of Medical Examiners, the Board of Nursing, the Board of Pharmacy, the State Board of Mortuary Science, or the State Board of Veterinary Medical Examiners, or a person authorized to act on their behalf, or any host entity, may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection a. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

c. Upon request of a person in this state authorized under subsection b., or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

d. A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

#### **COMMENT**

Section 5 authorizes the use of each of the various types of registration systems found to be effective in responding to the Gulf Coast Hurricanes of 2005. These systems include not only federally sponsored local Medical Reserve Corps, ESAR-VHP systems, and other systems expressly created under federal or state laws, but also registration systems established by disaster relief organizations, such as Disaster Human Resources System of the American Red Cross; systems established by associations of the state licensing boards, such as the Federation of State Medical Licensing Boards, the National Council of State Boards of Nursing and the Association of State and Provincial Psychology Licensing Boards; systems established by national associations of health professions, including the American Medical Association, the American Nurses Association, the American Psychology Association, the National Association of Social Workers, the American Counseling Association, the National Association of Chain Drug Stores, and the American Veterinary Medicine Association; and systems established by major tertiary care hospital systems. This act allows each of these various types of organizations to establish and operate registration systems without explicit governmental approval because they have demonstrated the resources, competence and reliability to review and communicate information regarding the professional qualifications of health practitioners. In addition, the act recognizes registration systems operated by state governments or by any other organization granted approval to establish a registration system by any state.

This Act does not require or authorize a state to designate or approve registration systems. The experience of the multiple entities that successfully recruited and verified the credentials following the Gulf Coast Hurricanes of 2005 showed that such a requirement is unnecessary and inefficient in deploying and utilizing volunteer health practitioners. Instead, this act empowers and legitimizes the operations of numerous types of public and nongovernmental organizations that have consistently demonstrated their ability to properly recruit, train, deploy and verify the credentials of volunteer health practitioners. Commenters expressed practical concerns about how the Act would be implemented - concerns that volunteers, upon their arrival in the State, will not know where to go, what to do or who is in charge in any given situation. The Commission acknowledges those concerns, but suggests that the development of any specific disaster response plan is beyond the scope of this Act and that, pursuant to the terms of the Act, volunteers must work through host entities, which are required to coordinate with the Department of Health.

This Section is substantially the same as Section 5 in the Uniform Act, except that, in subsection b., “any” was substituted before “a” host entity, and the phrase “a person authorized to act on their behalf” was used to shorten the clause, which previously read “a person authorized to act on behalf of the Department of Health, the State Board of Medical Examiners, the Board of Nursing, or the State Board of Veterinary Medical Examiners.”

This Section importantly preserves the ability of the State Board of Medical Examiners and the other named entities to verify the information in the registration system, which is an important right that they should be able to maintain as the bodies which govern practicing physicians, nurses, etc., in New Jersey. See *Valdes v. New Jersey State Bd. of Medical Examiners*, 205 N.J. Super. 398, 404-406 (App. Div. 1985).

This section permits state agencies to use existing registry systems, including the Medical Reserve Corps (“MRC”) and the Emergency System of Advance Registration of Volunteer Health Professionals (“ESAR-VHP”), both of which are, in New Jersey, being integrated and managed by the Department of Health.

The MRC is designed to help identify and register individuals who are willing to serve within their local area, usually their county. Volunteers will be utilized through county and local health agencies as part of the emergency management system in that jurisdiction. Currently, the Department of Health is trying to identify individuals with special expertise who would be assigned to certain “response teams.”

The ESAR-VHP is a national network of state-based programs for managing health professional volunteers. The ESAR-VHP program has been developed according to the federal ESAR-VHP Technical Standards and Guidelines, so that credential and licensure information can be verified at the highest level and volunteers that are willing to be activated in a federal emergency can be identified and mobilized to effectively respond across state lines. Professionals included in the ESAR-VHP include physicians, nurses, pharmacists, dentists, veterinarians, clinical social workers, respiratory therapists, cardiovascular technologists, EMTs and Paramedics, and Medical and Clinical Laboratory Technologists.

## **Section 6. Recognition of Volunteer Health Practitioners Licensed in Other States**

a. While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with Section 5 and licensed and in good standing in the state in which the practitioner’s registration is based, may practice in New Jersey to the extent authorized by this Act as if the practitioner were licensed in this state.

b. A volunteer health practitioner qualified under subsection a. is entitled to the protections of this Act to the extent that the volunteer health practitioner is performing services pursuant to a valid license, as defined by this Act, held by the practitioner in any state.

c. The Department of Health, the State Board of Medical Examiners, the Board of Nursing, the Board of Pharmacy, the State Board of Mortuary Science, or the State Board of Veterinary Medical Examiners may, in their discretion, waive the requirement of *N.J.S. 45:1-29* that each volunteer health practitioner undergo a criminal background check as a requirement of licensure when an emergency, as defined by Section 2 of this Act, exists. Agencies may only waive this requirement for health practitioners over whom they have jurisdiction.

d. The Department of Health, the State Board of Medical Examiners, the Board of Nursing, the Board of Pharmacy, the State Board of Mortuary Science, or the State Board of Veterinary Medical Examiners shall have the authority to review the credentials of all volunteer health practitioners, and may revoke the permission granted under subsection a. if they find that those credentials are not consistent with the standards required for licensure in this State.

### **COMMENT**

This Section addresses the need for licensure recognition of volunteer health practitioners who are licensed outside the state in which an emergency is declared. Out-of-state volunteers can be a critical resource to meet surge capacity in the host jurisdiction. In providing explicit authorization for out-of-state health practitioners to provide

services within a state during an emergency, this act follows existing precedent established by EMAC and numerous other existing state laws.

Subsections a. and b. are substantively identical to Section 6 of the Uniform Act. They are generally consistent with *N.J.S. 45:9-13*, which pertains to the licensing of physicians from out-of-state for practice in New Jersey. *N.J.S. 45:9-13* grants out-of-state physicians licenses, in the Board of Examiners' discretion, provided such physicians can prove they were "examined and licensed by the examining and licensing board of another State of the United States or by the National Board of Medical Examiners or by certificates of the National Board of Examiners for Osteopathic Physicians and Surgeons," and that they "can fulfill the requirements demanded in the other sections of this article relating to applicants for admission by examination."

Subsection a. provides that a host state shall recognize the out-of-state license of a volunteer health practitioner as being of equivalent status to a license granted by the host state's licensure board during an emergency. This is subject to all of the requirements of the act, including requirements that (1) the volunteer health practitioner be duly licensed in another state and in good standing; (2) that an emergency exist (as defined in Section 2(2)); (3) that the practitioner be registered with a registration system; and (4) that the practitioner comply with the scope of practice limitations imposed by the act, the laws of the host state, and any special modifications or restrictions to the normal scope of practice imposed by the host state or host entity pursuant to Section 8.

A suggestion was made that the "may" in subsection a. be changed to "shall." However, the Act only requires the state to recognize licensed, registered volunteers—it does not require that said volunteers actually practice in New Jersey when an emergency arises. A licensed and registered volunteer may still choose not to volunteer his or her services, even if they have been recognized by New Jersey.

Subsection b. restricts this act's protections to volunteer health practitioners whose licenses are not subject to a suspension, revocation, or disciplinary restriction, or who have not voluntarily terminated their license under threat of sanction, in any state. This is consistent with the requirements underlying the provision of services in Section 8 such that practitioners who meet any of the aforementioned criteria have had their qualifications questioned as to their ability to adequately provide health services. The provisions of subsection b. apply only to suspensions, revocations, restrictions and voluntary terminations that are disciplinary in nature. It is not intended that a decision by a practitioner to not renew a license in a particular jurisdiction or to accept a requirement that a license will not be active in a jurisdiction until certain continuing education or insurance requirements are satisfied because a practitioner is principally practicing in another jurisdiction, will disqualify an individual from practicing as a volunteer health practitioner under this act.

The Commission expressed concern over the use of the word "license" in the subsection b. because the wording could imply that the revocation or suspension of any license would bar a volunteer, even if the license suspended was not related to the volunteering, such as a driver's license. The limiting phrase "as defined by this Act" was therefore added since "license" is defined by this Act to mean "authorization by a state to engage in health or veterinary services".

Subsection c. was added to the language of the Uniform Act to permit the various regulatory agencies to waive the requirement, found in *N.J.S. 45:1-29*, that a health practitioner undergo a successful criminal background check before that practitioner can be licensed. It could defeat or substantially impair the goal of this Act to create an efficient registration system for expedient recognition of out-of-state health practitioners if that recognition could be delayed—perhaps by weeks—for a criminal background check. Commenters made arguments both for and against the requirement of criminal background checks, but since New Jersey law does impose that requirement, the Commission focused in this Section on crafting a mechanism that would permit volunteers to be able to assist here as needed during a declared emergency.

Subsection d. was added, in part, to allow the agencies to conduct background checks during the pendency of the emergency and to take action if a volunteer is found to have a problematic criminal background. Because the respective boards of examiners have been given significant discretion by the legislature, *see, e.g., Valdes v. New*

*Jersey State Bd. of Medical Examiners*, 205 N.J. Super. 398, 404-406 (App. Div. 1985), subsection d. also permits these boards the opportunity to deny temporary licensure to any physician, nurse, veterinarian, or other health practitioner who does not meet the standards that these boards have set forth for licensure.

The addition of this subsection is consistent with existing statutes and case law, both of which demonstrate the very heavily regulated nature of practicing health professions in New Jersey, and the exceedingly narrow ground on which out-of-state physicians, in particular, have been granted temporary licensure. For example, *N.J.S. 45:9-21(c)*, states that “[a] physician or surgeon of another state of the United States and duly authorized under the laws thereof to practice medicine or surgery therein,” is exempted from the state’s prohibition on practice by persons not licensed in New Jersey “if such practitioner does not open an office or place for the practice of his profession in this State.” Courts have interpreted the establishment of an office or place for practice language broadly enough to encompass the mere practice of medicine in New Jersey (and, in fact, this applies whether or not the person even sets foot in New Jersey). See *Allstate Ins. Co. v. Northfield Medical Center, P.C.*, 2001 WL 34779104 at \*27 (Law. Div. 2001). Additionally, *N.J.S. 45:9-21(l)* provides a specific exemption for “[a] person while giving aid, assistance or relief in emergency or accident cases,” but only “pending the arrival of a regularly licensed physician, or surgeon or under the direction thereof.” Taken together, these provisions support a conclusion that a doctor from another state who operates on a disaster victim in a New Jersey hospital must be subject to oversight by the State Board of Medical Examiners.

## **Section 7. No Effect on Credentialing and Privileging**

a. In this section:

(1) “Credentialing” means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) “Privileging” means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

b. This Act does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

### **COMMENT**

This provision is identical to Section 7 of the Uniform Act and gives health facilities and host entities the option of waiving their internal privileging and credentialing requirements and, presumably, also allows them to deny privileges to an out-of-state volunteer, even if that volunteer is duly licensed under the Act.

Credentialing and privileging standards can be an essential prerequisite to the actual delivery of health services in specific settings. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), for example, requires hospitals to be prepared to engage in rapid credentialing procedures as needed to respond to emergency events. In 2003, JCAHO recommended the creation of a credentialing database to support a national emergency volunteer system for health practitioners. *Health Care at the Crossroads: Strategies for Creating and Sustaining Community-wide Emergency Preparedness Systems* 24, 36 (JCAHO White Paper, March 2003). This would provide rapid access to information on volunteer clinicians during the planning and implementation of an emergency response. *Id.* at 36. To date, it does not appear that such a database has been established. The website for the Federal Emergency Management Agency discusses resource management, and the issue of credentialing, but describes the efforts in that regard as a work in progress (Federal Emergency Management Agency, Resource Management, Credentialing, <http://www.fema.gov/resource-management>, last visited September 8, 2013).

## **Section 8. Provision of Volunteer Health or Veterinary Services; Administrative Sanctions**

a. Subject to subsections b. and c. of this section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

b. Except as otherwise provided in subsection c. of this section, this Act does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a practitioner similarly licensed by New Jersey would be permitted to provide the services.

c. The Department of Health, the State Board of Medical Examiners, the Board of Nursing, the State Board of Veterinary Medical Examiners, the Board of Pharmacy, the State Board of Mortuary Science, or, if the appropriate entity is not available, the Governor, may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this Act. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the New Jersey Administrative Code.

d. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this Act.

e. A volunteer health practitioner does not engage in unauthorized practice unless the practitioner knows or has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner knows or has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

f. In addition to the authority granted by New Jersey law other than this Act to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) may impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and



(3) shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

g. In determining whether to impose administrative sanctions pursuant to subsection f. of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

#### COMMENT

This section is essentially the same as Section 8 of the Uniform Act, with the names of the regulatory agencies included.

Subsection a. provides that volunteer health practitioners may only render health services that would be within the scope of practice of a similarly situated practitioner in the host state. Outside this act, the term "scope of practice" may have different meanings depending on how it is used. This Act, however, distinguishes between credentialing and privileging requirements and scope of practice limitations. Under this act, "scope of practice" is defined in Section 2 subsection *l.* to mean the extent of authorization to provide health or veterinary services established by the licensure boards of the state in which a practitioner is licensed and primarily engages in practice. This limits the types of services volunteer health practitioners can perform to those services unique to their profession. Nonetheless, the scope of practice may differ among individuals depending on the state(s) where they are principally licensed. The services a practitioner provides may be modified or restricted by a state licensing board or other agency pursuant to subsection c. or restricted by a host entity pursuant to subsection d.

As indicated above, subsection a. requires that a volunteer health practitioner (whether in-state or out-of-state) must adhere to the applicable scope of practice for similarly situated practitioners in the host state during the emergency. For practitioners licensed in the host state before the emergency, they must, of course, adhere to the state's scope of practice for their profession. For out-of-state practitioners who are not licensed in the host state before the emergency, the requirement to adhere to the host state's scope of practice is consistent with the recognition pursuant to Section 6 subsection a. that out-of-state practitioners are to be viewed as licensed in the state for the duration of the emergency. Through subsection a., the scope of practice requirements for similarly situated practitioners is coupled with their recognition of a temporary license as provided in Section 6a. This helps ensure uniformity in the scope of practice among various practitioners from other jurisdictions.

Subsection b. clarifies that this section (nor any other provisions of the act) does not authorize a volunteer health practitioner to provide services that are outside the practitioner's own scope of practice even if a similarly situated practitioner in this state would be permitted to provide the services. This restriction, which principally applies to practitioners whose licensure during non-emergencies is out-of-state, helps ensure that they do not provide services during emergencies that they would not be entitled to provide in their usual course of business or activities. This is significant where a volunteer health practitioner is licensed in more than one state.

Subsection c. authorizes the state licensing board or other appropriate state agency (or agencies) to modify or restrict the type of services volunteer health practitioners may provide during an emergency. This provision must be considered *in pari materia* with the licensure laws and regulations of the host state. The rationale is to empower state agencies to adapt their emergency response plans to unforeseeable circumstances stemming from an emergency to meet patient needs or protect the public's health. In some instances, this may require empowering volunteer health practitioners to provide services that are not typically allowed under existing state licensure laws. In New Jersey, for example, the Commissioner of Health may waive any rules and regulations concerning professional practice in the state during an emergency. *N.J.S.26:13-18* subsection b.(2). In other circumstances, a state may choose to limit volunteer health practitioners to only provide certain designated types of services not otherwise available because of the impact of a disaster. In either case, during an emergency there may be legitimate reasons for a state to modify or restrict the health services that a volunteer health practitioner may provide consistent with overriding public health objectives or patient needs. The phrase "or, if the appropriate entity is not available, the

Governor,” was added to subsection c. to permit the Governor, who has expanded powers during a state of emergency, to administer the Act if, due to a breakdown in communication or an extreme catastrophe, the other named entities are not able to.

Subsection d. authorizes a host entity to restrict the services that volunteer health practitioners may provide. Host entities need to make decisions in real time to allow for an efficient and effective emergency response. This provision does not authorize a host entity to alter the scope of practice of a particular profession as defined by state licensure boards or other appropriate agencies. Therefore, a hospital acting as a host entity cannot authorize a nurse to provide services that only a physician may perform. However, the hospital may limit the types of services that a volunteer health practitioner is authorized to perform. A hospital, for example, may delegate different responsibilities among volunteer health practitioners that limit what the practitioners can do in the treatment of patients or provision of public health services during a non-emergency. This population-based approach to the delivery of health services is consistent with the underlying public health objective of this act to assure the health and well-being of affected members of the population.

## **Section 9. Relation to Other Laws**

a. This Act does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this Act. Except as otherwise provided in subsection b. of this section, this Act does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

b. The Department of Health, pursuant to the Emergency Management Assistance Compact, may incorporate into New Jersey’s emergency forces volunteer health practitioners who are not officers or employees of New Jersey, a political subdivision of New Jersey, or a municipality or other local government within New Jersey.

### **COMMENT**

This section is substantively identical to Section 9 of the Uniform Act.

Subsection b. creates a statutory path to allow private sector volunteers to be incorporated into state forces for the limited purpose of facilitating their deployment and use during an emergency through EMAC or other state mutual aid compacts or agreements. During Hurricane Katrina, many states sought to deploy volunteers through EMAC to provide them greater protections and fulfill state responsibilities pursuant to this compact. In many states, this required the hasty execution of agreements or issuance of executive orders authorizing the volunteers to become temporary state agents. To avoid future delays, this provision authorizes the appropriate state agency to incorporate any private sector volunteers into state forces as needed to deploy them via EMAC or other interstate compacts or agreements.

## **Section 10. Regulatory Authority**

The Department of Health may promulgate rules to implement this Act. In doing so, the Department of Health shall consult with and consider the recommendations of the Office of Emergency Management. The Department of Health shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this Act and make the emergency response systems in the various states reasonably compatible.

## COMMENT

This Section is substantially similar to Section 10 in the Uniform Act, with the name of the Department of Health inserted in the text. The language of the draft has been returned to that found in the previous version of the draft that made reference to the Office of Emergency Management. The Uniform Act says “the entity established to coordinate the implementation of the Emergency Management Assistance Compact”.

The OEM coordinates health emergencies in New Jersey. *See N.J.S. 26:13-3*. Since it was not clear to Staff that the OEM is vested with exclusive jurisdiction for coordinating implementation of the EMAC in New Jersey, the draft statutory language was initially broadened. A review of the Commission’s earlier consideration of this issue, however, revealed that the Department of Health had raised a concern that there could be conflicting rules or directives issued by different governmental entities. Since each group has sovereign power over the groups they oversee, various regulations could result and one entity could foreseeably promulgate a regulation that intruded into another entity’s jurisdiction. Since this statute is only relevant in an emergency situation, the Commission determined that identifying the DoH or the OEM as the regulatory body in charge of coordinating government response to the emergencies addressed by the UEVHPA would be most appropriate. A benefit of having either of those entities coordinate is that they have fulltime operations. It was further determined that the centralized implementing body should be the agency promulgating regulations after consultation with other agencies having an interest. The language that appears above was crafted as a result of this consideration.

It was suggested by a commenter that registration of volunteers will be very difficult under emergency conditions, but critically important, and that the Department of Consumer Affairs, as the licensing agency, would be in a better position to manage the issues raised than the DoH. While certainly a valid concern, since the mechanics of registering volunteer health practitioners are important to the Act, but not included within its scope, the language of the Act was not modified to address that issue.

## **Section 11. Limitations on Civil Liability for Volunteer Health Practitioners; Vicarious Liability**

a. Volunteer health practitioners, as defined in Section 2 of this Act, shall be afforded the same rights, protections, and limitations on liability as are provided by *N.J.S. 2A:62A-1 et seq.*, of the “Good Samaritan Act”, or *N.J.S. 45:16-9.10 et seq.*, the “New Jersey Veterinary Good Samaritan Law”, as applicable.

b. The rights, protections, and limitations on liability provided under *N.J.S. 2A:62A-1 et seq.*, or *N.J.S. 45:16-9.10 et seq.*, as applicable, shall apply to health services performed pursuant to the declared emergency whether or not those health services are performed within a health facility.

c. The rights, protections, and limitations on liability provided under *N.J.S. 2A:62A-1 et seq.*, or *N.J.S. 45:16-9.10 et seq.*, as applicable, shall apply to health services provided for the treatment of human or animal ailments, disease, pain, injury, deformity, mental or physical condition.

d. No person, including entities that send volunteers to New Jersey to assist during the declared emergencies, is vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under this section.

e. A person that, pursuant to this Act, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

f. This section does not limit the liability of a volunteer health practitioner for:

- (1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
- (2) Intentional tort;
- (3) Breach of contract;
- (4) A claim asserted by a host entity or an entity located in this or another state which employs or uses the services of the practitioner.

#### COMMENT

This section combines part of Section 11 of the Uniform Act with a reference to New Jersey's Good Samaritan Act, *N.J.S. 2A:62A-1 et seq.* and *N.J.S. 45:16-9.10 et seq.* the "New Jersey Veterinary Good Samaritan Law", in order to afford the same limitation on liability provided under the GSA or the VGSL to the emergency volunteers. This Act does not change the provisions of the GSA or the VGSL, it simply incorporates them by reference. Both laws are referenced in this section because, while they are similar, the provisions of the two are not identical. It is anticipated that professionals in each of the health care areas are familiar with the provisions of the law that currently apply to them, so an effort was made to maintain the status quo in that regard.

Subsection a. limits the liability of volunteer health practitioners, as defined in Section 2 of the Act, to that permissible pursuant to the Good Samaritan Act or the New Jersey Veterinary Good Samaritan Law, as applicable.

Subsection b. broadens the scope of immunity under this Act to match the Good Samaritan Act's parameters for services rendered in a health facility, as defined in Section 2 of the Act. This is consistent with a broader protections and limitation of liability afforded volunteer health practitioners in the Emergency Health Powers Act, *N.J.S. 26:13-6* subsection d. This addition was necessary because the Good Samaritan Act has been interpreted by the state Supreme Court as inapplicable when the volunteer physician gives aid in a health facility. *Velazquez ex rel. Velazquez v. Jiminez*, 172 N.J. 240, 262 (2002).

The incorporation of the Good Samaritan Act's and the New Jersey Veterinary Good Samaritan Law's provisions only applies to out-of-state volunteers. The definition of volunteer health practitioners does not include physicians or veterinarians licensed in New Jersey and acting within the scope of their employment during the emergency. The Good Samaritan Act does not apply to physicians licensed and working in New Jersey during emergencies when they work in a health facility and, as this is the status quo for these professionals, there was no compelling reason to broaden their immunity. However, in order to provide an incentive to have professionals from outside New Jersey volunteer to help in New Jersey during an emergency, the Act broadens immunity for these volunteers to include services performed inside a health facility.

Subsection c., like the preceding subsections, includes a reference to veterinarians.

The Commission gave much consideration to the provisions of this Section and sought comment from the NJSBA. While no comment has been received to this time, it is noted that the American Bar Association approved the Uniform Act, while the American Association for Justice (formerly known as the Association of Trial Lawyers of America) objected to the limitation on civil liability for volunteers.

Subsections d. and e., taken largely from the Uniform Act, limit vicarious liability for host entities and also the entities from other states that may send volunteer health practitioners into New Jersey. The language of these subsections is consistent with *N.J.S. 2A:53A-7* subsections b. and c., which provide immunity from civil actions for acts or omissions committed by volunteers in the provision of aid to the “nonprofit corporation, society or association organized exclusively for hospital purposes,” except for “willful, wanton or grossly negligent act[s] of commission or omission, including sexual assault and other crimes of a sexual nature.” However, by using the term “host entity,” this language includes all health facilities used during the emergency, whether or not they are nonprofit facilities.

Subsection f., taken from the Uniform Act, is meant to limit explicitly the acts or omissions covered by the expanded protections. While case law has indicated that the acts listed in subsection f. are not covered by the Good Samaritan Act, there is no case law addressing the issue with regard to the Veterinary Good Samaritan Law, so they are listed here for completeness.

## **Section 12. Workers’ Compensation Coverage**

a. In this section, “injury” means a physical or mental injury or disease for which an employee of this state who is injured or contracts the disease in the course of the employee’s employment would be entitled to benefits under the workers’ compensation law of this state.

b. A volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this Act is deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers’ compensation law of this state if:

(1) the practitioner is not otherwise eligible for such benefits for the injury or death under the workers’ compensation laws of this or another state; and

(2) the practitioner is not otherwise eligible for such benefits for the injury or death under an insurance plan in which the practitioner participates.

c. The Division of Workers’ Compensation shall adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits for injury or death under the workers’ compensation law of this state by volunteer health practitioners who reside in other states, and may waive or modify requirements for filing, processing, and paying claims that unreasonably burden the volunteer health practitioners. To promote uniformity of application of this Act with other states that enact similar legislation, the Division of Workers’ Compensation shall consult with and consider the practices for filing, processing, and paying claims by agencies with similar authority in other states.

### **COMMENT**

This section is based on Section 12 of the Uniform Act. The term “workers’ compensation” is used, consistent with the state government’s adoption of the gender-neutral term for the Division of Workers’ Compensation.

This section is consistent with *N.J.S. 34:15-75*, which provides workers’ compensation for volunteer firemen, county fire marshals, volunteer first aid or rescue squad workers, volunteer ambulance drivers, forest fire wardens or firefighters, members of boards of education, and volunteer special reserve or auxiliary policemen. This section is needed because, traditionally, volunteers were not considered “employees” within the meaning of Title 34 and, therefore, are not entitled to workers’ compensation. *See, e.g., Veit v. Courier Post Newspaper*, 154 *N.J. Super.*

572, 573 (App. Div. 1977) (“It is clear that one who volunteers his services and neither receives nor expects to receive payment is not an employee for workers' compensation purposes.”).

This section has not been adopted by all of the states to adopt the Uniform Act. New Mexico, in *N. M. S. A.* 1978, § 12-12A-12, did not make coverage as a state employee compulsory; rather, volunteers “may elect” to be treated as a state employee, so long as they are also “not otherwise eligible for benefits for injury or death under the workers' compensation law of this or another state.” Tennessee, in *T. C. A.* § 58-2-812, makes the coverage compulsory, but limits it to “to those medical benefits provided to state employees under the laws of this state.” Utah, in *U.C.A.* 1953 § 26-49-601, makes the coverage compulsory, as well, and adds a section computing “the workers' compensation benefits for a volunteer health practitioner” as “the state's average weekly wage at the time of the emergency.” The Commission carefully considered the issue and elected to draft the provision so that workers' compensation coverage is available to a volunteer if the volunteer does not have access to other coverage for the injury or death. This language, as initially drafted, included a reference to a “private” insurance plan – the word “private” was removed so that individuals who may be covered by a plan through a public employer, for example, are not deemed to be an employee of the State of New Jersey.

The receipt of some compensation by volunteers—e.g., reimbursement of, or allowance for, reasonable expenses, or continuation of salary or other remuneration while on leave—should not destroy the right of a volunteer with no other workers' compensation coverage from being covered.

### **Section 13. Uniformity of Application and Construction**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

#### **COMMENT**

This section is identical to Section 13 of the Uniform Act.

### **Section 14. Repeals**

[reserved]

#### **COMMENT**

No current statutory provisions would have to be repealed to effectuate this Act.

### **Section 15. Effective Date**

This Act takes effect...