

July 2, 2018

The Honorable Greg Walden  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Walden and Ranking Member Pallone:

On behalf of the physician and medical student members of the American Medical Association (AMA), I express AMA's strong support for H.R. 1876, the "Good Samaritan Health Professionals Act of 2018" (GSHPA) and urge the inclusion of GSHPA in the Pandemic and All-Hazards Preparedness Reauthorization Act of 2018 (PAHPA). The GSHPA will greatly facilitate the rapid deployment of needed health care services during a federally declared disaster by providing clear, but limited, liability protections for all health care professional volunteers serving those who have been affected by such disasters.

Currently, there is a patchwork of federal and state laws regarding the liability protections for volunteering to help disaster victims. These laws fail to address the occasion when a catastrophic event requires a surge of private health care providers.

The bill fixes this patchwork by providing a uniform liability protection to licensed health care professionals who volunteer to provide needed health care services to victims during federally declared disasters. The protection is limited. In order to receive this protection, the individual:

- must be a volunteer and not receive any compensation;
- must be licensed;
- must act within the scope of license of their home state;
- must be performing health care services;
- must be during a federally declared disaster;
- must be in response to the disaster; and
- must occur in the state of the declared disaster.

Moreover, GSHPA does not apply liability protections where the harm is caused by willful or criminal misconduct, gross negligence, reckless misconduct, or if the volunteer is under the influence of an intoxicating substance.

The bill also explicitly recognizes state laws that provide stronger protections to volunteer health care professionals. Moreover, states continue to be wholly responsible for licensure and can limit or expand a

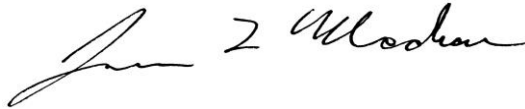
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volunteer's scope of practice as needed or bar them from providing services altogether. As a practical matter, states often waive licensure requirements during major health care emergencies.

We strongly support and promote registration systems like the Emergency System for Advance Registration of Volunteer Health Professionals. These registration systems, however, are limited in practice because communication systems frequently collapse during catastrophic emergencies, making it impossible to check if a provider is on a state or federal emergency responders list. Moreover, large scale disasters may create the need for more health care professionals than those who register in advance. Previous large scale mortality and morbidity events have demonstrated that what may be perceived as adequate preparation cannot compensate for unforeseeable circumstances. This bill would eliminate confusion by providing clear, uniform civil immunity for all health care volunteers who respond to a federally declared disaster.

Given the threat of natural disasters, pandemic outbreaks, and terrorist attacks, it is only appropriate to encourage more volunteerism by licensed health care professionals via the granting of limited liability protections. Enclosed is a copy of our response to the frequently asked questions. We look forward to working with the Committee in addressing these challenges and urge the inclusion of this bill in PAHPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L Madara". The signature is written in a cursive, flowing style.

James L. Madara, MD

Enclosure

**Q: Why is the Good Samaritan Health Professionals Act (GSHPA) needed?**

A: Currently, there is a patchwork of federal and state laws regarding the liability protections for volunteering to help disaster victims. While generally these laws work, gaps exist. These laws fail to address the occasion when a catastrophic event requires a surge of private health care providers. For example, there are documented cases after 9/11 and Hurricane Katrina of needed health care volunteers being turned away by officials due to liability concerns. Furthermore, no law broadly exists to cover the liability of (1) out-of-state medical volunteers and (2) in-state volunteer who are not associated with a nonprofit or government organization.

A uniform federal approach will greatly facilitate the rapid deployment of needed health care services across state lines by providing clear liability protections for all health care professional volunteers serving those who have been affected by a disaster.

**Q: Does this legislation provide blanket immunity to any individual for any harm while acting in a volunteer capacity during a disaster?**

A: No. GSHPA provides a uniform, but limited protection to licensed health care professionals who volunteer to provide needed health care service to victims during a federally declared disaster. *The protection is limited.* The individual (1) must be a volunteer and not receive any compensation; (2) must be licensed; (3) must act within the scope of license of their home state; (4) must be performing health care services; (5) must be during a federally declared disaster; (6) must be in response to the disaster; and (7) must occur in the state of the declared disaster. If an individual does not meet any of the above criteria, the individual does not receive liability protection under this bill. Moreover, GSHPA does not apply liability protections where the harm is caused by willful or criminal misconduct, gross negligence, reckless misconduct, or if the volunteer is under the influence of an intoxicating substance.

**Q: Would this bill allow medical volunteers to provide health care services outside the scope of their practice?**

A: No. The bill includes a provision that limits liability protections for health care providers rendering services within the scope allowed by their state of licensure.

**Q: Does the bill license physicians to practice out of state?**

A: No. The states continue to be wholly responsible for licensure and can limit or expand a volunteer's scope of practice as needed or bar them from providing services altogether. As a practical matter, states often waive licensure requirements during major health care emergencies.

**Q: Volunteer registration systems exist that may take care of licensing issues or may have liability protections like the National Disaster Medical System (NDMS), the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP), and other systems. States also have interstate mutual assistance agreements. Aren't these systems sufficient? Should registration be mandated in order to receive liability protections?**

A: No. These systems are important, but there are situations where these systems have been limited in practice and have not resulted in an adequate number of private volunteers needed in response to a disaster. Communication systems frequently collapse during catastrophic emergencies making it impossible to check if a provider is on a state or federal emergency responders list. Moreover, large scale disasters may create the need for more health care professionals than those who register in advance. For example, the large scale mortality and morbidity caused by Hurricane Katrina further demonstrated that what may be perceived as adequate preparation cannot compensate for unforeseeable circumstances. GSHPA would eliminate confusion by providing clear, uniform civil immunity for all health care volunteers who respond to a federally declared disaster regardless of registration.

**Q: Does current liability law discourage volunteers during a time of emergency? Why isn't the Volunteer Protection Act of 1997 sufficient?**

A: As with any circumstances, some individuals will respond immediately to help without regard to the level of liability risk to which they may be exposing themselves. However, we live in a very litigious society, and one of the barriers to greater volunteerism among health care professionals is the fear of liability associated with providing uncompensated services. In 2006, the American Public Health Association conducted an informal survey which found that 70% of health care providers found liability protection to be important or essential in deciding whether to volunteer during an emergency. In a large-scale disaster needing a federal declaration, it is only appropriate to encourage more volunteerism by licensed health care professionals via the granting of limited liability protections.

The Volunteer Protection Act of 1997 is not sufficient because it only covers those who volunteer in their home states with a nonprofit organization or a government entity. It does not cover out of state providers or in-state providers who are not affiliated with a nonprofit organization or a government entity. Additionally, it does not address the kind of spontaneous volunteerism which could be expected in the event of a large scale disaster. GSHPA addressed these gaps in policy.

**Q: Does the bill preempt state law?**

A: The bill explicitly recognizes state laws that provide stronger protections to volunteer health care professionals. As noted above, states remain wholly responsible for licensing health professionals. Also, state scope of practice laws are not preempted.

**Q: Why can't states solve this problem through state laws or compacts?**

A: This is an interstate problem. Even in cases where states have waived licensure requirements or have mutual assistance agreements, needed health care professionals have been delayed or turned away over liability concerns because it was unclear how existing Good Samaritan laws would apply. The only way to adequately address this issue at the state level would be to have all states set up reciprocity agreements with each other—a difficult and cumbersome process.

A federal Good Samaritan standard will resolve this issue by providing clear civil immunity at the federal level for all health care providers who volunteer to provide aid in the narrow case of a federally-declared disaster.

**Q: Does GSHPA offer special liability protections to volunteers compared to other federal or state volunteer protection laws?**

A: No. The liability protection under GSHPA is in parity with and uses the same standard as the Volunteer Protection Act of 1997 and is similar to the Uniform Emergency Volunteer Health Practitioners Act.

**Q: Why is it not sufficient to require medical volunteers to present their medical license on site?**

A: Even if a medical volunteer presents their medical license on site, verifying those credentials may be impossible if, for example, communication systems are down. GSHPA does not directly address issues related to licensure. It is narrowly written to address issues related to medical liability. However, to the extent a volunteer is providing medical services beyond the scope of their license, GSHPA liability protections would not apply.

**Q: What is the federal cost associated with GSHPA?**

A: The bill does not require any federal expenditures and the Congressional Budget Office (CBO) estimates that implementing this legislation would result in no significant cost to the federal government.