



Executive Summary

Good Samaritan Liability Preparedness Initiative for Business and Non-Profit Entities Assisting in Emergency Response Activities

As part of the Public / Private Legal Preparedness Initiative of the North Carolina Institute for Public Health (NCIPH) at the University of North Carolina School of Public Health, this initiative is designed to remove disincentives and increase motivation for business and non-profit entities to collaborate with government to protect the public during emergency situations.

Most state Good Samaritan laws leave significant gaps of liability exposure for both business entities and non-profit organizations that assist in preparing for and responding to an emergency posed by a natural disaster, emerging infection, or terrorist event. Under traditional state law, most Good Samaritan liability protection only covers individuals acting in good faith to assist others. This gap can lead to hesitation or lack of coordination on the part of business and non-profit entities providing help during an emergency situation.

A few concrete examples provide illustrations of the need for immediate state legislative change:

Distribution of Strategic National Stockpile (SNS) Material: In a serious emergency situation, there will not be enough government workers to widely distribute SNS materials to large population cohorts. Collaboration with the private sector will be needed in a flu pandemic to distribute, for example, anti-viral medicines to key service workers and then to other employees, family members, and larger segments of the population. Businesses and non-profits voluntarily assisting in such distribution are potentially exposed to civil liability under state law for adverse events relating to the administration of such SNS materials.

Logistical Support of Food and Services During an Emergency: In a shelter-in-place or voluntary quarantine situation, the current just-in-time supply chains for food and other necessities will be severely challenged. It is important that businesses and non-profit organizations not hesitate, due to liability concerns, from developing new, flexible arrangements in coordination with governmental agencies to get supplies immediately to persons in need.

Facilities Made Available to Provide Shelter During an Emergency: The recent experience with persons displaced by Hurricane Katrina demonstrate the value of the surge capacity of non-profit organizations, such as churches, to shelter and provide support to individuals in need. In planning for a pandemic flu scenario, churches have realized their potential liability if, for example, a disease spreads within a cohort of persons being temporarily sheltered on their premises.

Four Elements of the Proposal

1. Extend Good Samaritan protection to business and non-profit entities acting in good faith during an emergency. As a policy matter, this simple change puts businesses and non-profits on the same footing as individuals, who are encouraged by the law to act in good faith to help during an emergency. Note that, in general, Good Samaritan protection provides qualified immunity from negligence liability. Good Samaritan laws do not normally extend liability protection to cover wanton, reckless, or intentional conduct.
2. Extended coverage would be triggered by the Governor's emergency declaration. This coverage for businesses and non-profits would be automatically activated when the Governor of the state declares an emergency. It would not require any federal declaration.
3. Coverage would apply only to emergency activities conducted in coordination with the State. The liability protection would not extend to businesses and non-profits acting unilaterally and without coordination with the state government. It would require the activity to be conducted pursuant to the order or request of the state government or any political subdivision of the state. This provision encourages the desired coordination between the public and private sectors.
4. Coverage would also include pre-event planning and training activities that take place prior to the declared emergency. Once the Governor declares an emergency, the liability protection for businesses and non-profits would extend retroactively to also cover the pre-event planning and training activities that took place prior to the emergency. This provision is designed to encourage the development of pre-event memoranda of understanding between public and private entities, as well as training and practice events.

Stakeholders

Stakeholders in the community who have an obvious interest in implementing this initiative include businesses, trade associations, and business organizations; non-profit organizations colleges, and churches; as well as public health, emergency management, and civic leaders, among others.

Further Information

Further information on this NCIPH project can be obtained at www.sph.unc.edu/nciph/law.