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January 16, 2018

The Honorable Michael Burgess, MD  
House Energy and Commerce Committee  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Gene Green  
House Energy and Commerce Committee  
United States House of Representatives  
2322A Rayburn House Office Building  
Washington, D.C. 20515

Subject: “Good Samaritan Health Professionals Act of 2017”

Dear Chairman Burgess and Ranking Member Green:

Representing a diverse coalition of providers and associations working to reduce medical lawsuit abuse and improve timely access to quality care, the Health Coalition on Liability and Access commends your decision to markup the *Good Samaritan Health Professionals Act of 2017* (H.R. 1876).

Over the past year, large-scale disasters have included the wildfires of California and the hurricanes and subsequent flooding of Texas, the Gulf Coast and Puerto Rico. These events highlight the need to ensure that medical professionals who seek to lend their expertise and assistance to victims of these natural disasters are not turned away or limited in the scope of their assistance because of the threat of medical liability lawsuits.

Inconsistencies in current federal and state laws could subject medical professionals and licensed health care providers to unjust medical liability lawsuits when they volunteer their services to disaster victims. The *Good Samaritan Health Professionals Act of 2017* would help protect medical volunteers from such lawsuits during a federally-declared disaster, and ensure that vital health care services often provided by medical volunteers remain available – all while respecting existing medical liability laws in individual states.

Additionally, the bill is narrowly tailored to apply its protections only to licensed health care providers, and will not apply to a health care provider if the harm caused was criminal or deliberate in nature.

The *Good Samaritan Health Professionals Act of 2017* will ensure that an adequate supply of trained health care professionals are ready, willing and able to volunteer their services during a catastrophe, and that they will not be deterred or turned away due to the threat of lawsuits.

On behalf of our coalition members, and patients and providers across the country, we urge the Subcommittee members to advance the *Good Samaritan Health Professionals Act of 2017* in the interest of improving medical care when disaster strikes.

Sincerely,

AMDA-The Society for Post-Acute and Long-Term Care Medicine  
American Academy of Dermatology Association  
American Academy of Neurology  
American Association of Neurological Surgeons  
American Association of Orthopaedic Surgeons  
American College of Obstetricians and Gynecologists  
American College of Osteopathic Surgeons  
American College of Surgeons  
American Medical Association  
American Osteopathic Academy of Orthopedics  
American Osteopathic Association  
American Society of Plastic Surgeons  
American Urological Association  
Congress of Neurological Surgeons  
Cooperative of American Physicians  
COPIC  
The Doctors Company  
MAGMutual Insurance Company  
Medical Assurance Company of Mississippi  
Medical Insurance Exchange of California  
Medical Liability Mutual Insurance Company  
National Association of Spine Specialists  
NORCAL Group  
Physicians Insurance A Mutual Company  
PIAA  
Society for Vascular Surgery  
SVMIC  
TEAMHealth  
Texas Alliance for Patient Access  
Texas Medical Liability Trust

cc: Subcommittee on Health Members



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## **The Good Samaritan Health Professionals Act of 2017** ***Protecting Our Disaster Volunteers***

The impact of large-scale disasters in 2017 was unprecedented, and at a cost of \$306 billion in damages to communities across the United States, was the most expensive year on record for natural disasters.<sup>1</sup> Looking back to the California wildfires, Gulf Coast and Puerto Rico hurricanes, flooding and tornadoes, we recall vivid memories of medical professionals rushing to the scene to provide immediate care to victims. Unfortunately, due to inconsistencies in federal and state laws, some of these volunteer health care professionals have been turned away or limited in the scope of their assistance because of the threat of medical liability lawsuits.

These vague laws could subject medical professionals and licensed health care providers to unjust medical liability lawsuits when they volunteer their services to disaster victims.

### ***Protecting Good Samaritans***

Introducing identical bills in the House and Senate, Representative Marsha Blackburn (R-TN) and Senator Bill Cassidy, MD (R-LA) have introduced *The Good Samaritan Health Professionals Act of 2017* (H.R. 1876/S. 781) to help protect medical volunteers from lawsuits during a federally- declared disaster, and ensure that vital health care services often provided by medical volunteers remain available.

The protections in the bill will only apply to licensed health care providers, and will not apply to a health care provider if the harm caused was criminal or deliberate in nature.

### ***Piecing Together a Patchwork of State Laws***

While some states have taken steps to protect medical volunteers, these efforts are sometimes insufficient in the face of wide scale catastrophes. As a result, the current patchwork of federal and state laws that exist to encourage medical volunteerism are inconsistent and are often extremely unclear, especially when applied to large-scale disasters that may cross state lines.

*The Good Samaritan Health Professionals Act of 2017* respects existing medical liability laws in individual states, while creating a more comprehensive and clear approach to medical volunteerism during a federally-declared disaster.

### ***Closing the Liability Loophole***

By passing the *Good Samaritan Health Professionals Act of 2017*, medical professionals and licensed health care providers, who put themselves at risk by providing uncompensated services to disaster victims, will not have to fear meritless lawsuits, and disaster victims will have an adequate supply of trained health care professionals ready and willing to volunteer their services in their hour of need.

***The Good Samaritan Health Professionals Act of 2017 will ensure that an adequate supply of trained health care professionals are ready, willing and able to volunteer their services during a catastrophe, and that they will not be deterred or turned away due to the threat of lawsuits.***

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<sup>1</sup> “Extreme hurricanes and wildfires made 2017 the most costly U.S. disaster year on record,” *The Washington Post*, 8 January 2018.

States and residents across the country are impacted by large-scale disasters. Without *The Good Samaritan Health Professionals Act of 2017*, residents of your state could face a shortage of health professionals during future disasters.

**FEMA DRF Major Disaster Assistance  
FY2000-FY2013**

State	Number of disaster declarations	Types of disasters	Federal disaster aid received
Alabama	23	Hurricanes	\$2.7 billion
Alaska	20	Flooding, ice jams, earthquake	\$275 million
Arizona	11	Severe storms, flooding, wildfires	\$88 million
Arkansas	23	Winter storms, tornadoes, flooding	\$889 million
California	16	Wildfires, severe storms, flooding, landslides, earthquakes	\$1.5 billion
Colorado	7	Flooding	\$664 million
Connecticut	8	Hurricanes, severe storms	\$412 million
Delaware	7	Hurricanes, severe winter storms	\$39 million
District of Columbia	10	Hurricanes, severe winter storms	\$45 million
Florida	24	Hurricanes	\$10.6 billion
Georgia	10	Severe storms, flooding	\$511 million
Hawaii	8	Earthquakes, severe storms, flash flooding	\$115 million
Idaho	6	Severe storms, flooding, wildfires, landslides	\$18 million
Illinois	17	Severe storms, flooding	\$1.3 billion
Indiana	17	Severe storms, flooding	\$529 million
Iowa	21	Severe storms, tornadoes, flooding, winter storms	\$2.7 billion
Kansas	27	Winter storms, tornadoes, flooding	\$1.2 billion
Kentucky	24	Severe winter storms, flooding	\$933 million
Louisiana	19	Hurricanes	\$36.6 billion
Maine	19	Severe storms, flooding	\$123 million
Maryland	10	Hurricanes, severe winter storms	\$336 million
Massachusetts	13	Severe storms, tornadoes, hurricanes	\$688 million
Michigan	5	Storms, flooding, tornadoes	\$334 million
Minnesota	18	Severe storms, flooding	\$524 million
Mississippi	21	Hurricanes	\$10.8 billion
Missouri	27	Severe storms, tornadoes, flooding	\$1.5 billion
Montana	10	Severe storms, flooding, winter storms, wildfires	\$113 million
Nebraska	22	Severe winter storms, flooding	\$509 million
Nevada	4	Severe storms, flooding, fires, winter storms	\$29 million
New Hampshire	18	Severe storms, flooding	\$192 million
New Jersey	17	Hurricanes	\$3.8 billion
New Mexico	11	Severe storms, flooding	\$219 million
New York	28	Terrorist attacks, hurricanes	\$23 billion
North Carolina	14	Hurricanes	\$726 million
North Dakota	22	Severe winter storms, flooding	\$1.2 billion
Ohio	19	Severe winter storms, flooding, tornadoes	\$637 million
Oklahoma	36	Winter storms, severe storms, tornadoes	\$1.2 billion
Oregon	10	Severe storms, flooding, landslides	\$198 million
Pennsylvania	14	Hurricanes, severe storms	\$1 billion
Rhode Island	5	Severe storms, flooding, hurricanes	\$141 million
South Carolina	7	Severe ice storms, tropical storms	\$76 million
South Dakota	22	Flooding, severe winter storms	\$316 million
Tennessee	22	Severe storms, flooding, high winds, tornadoes	\$974 million
Texas	19	Hurricanes, tropical storms	\$8.8 billion
Utah	6	Flooding, severe winter storms	\$45 million
Vermont	20	Severe storms	\$423 million
Virginia	21	Hurricanes, earthquake	\$813 million
Washington	11	Earthquake, severe storms, flooding, landslides	\$620 million
West Virginia	23	Severe storms, flooding, landslides	\$659 million
Wisconsin	12	Severe storms, flooding	\$430 million
Wyoming	4	Severe storms, floods, landslides	\$16 million

## **Health Coalition on Liability and Access (HCLA) Questions & Answers**

### ***Good Samaritan Health Professionals Act of 2017 (H.R. 1876)***

**Q. It seems there is currently a patchwork of state laws regarding volunteering to help disaster victims. Is that correct?**

A. Not all state Good Samaritan laws are the same, nor are medical volunteers covered by all such laws. While these laws work well, in general, they fail to address those rare occasions when there is a catastrophic event that requires a surge of private health care providers across state lines. 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.

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

**Q. Do medical volunteers need to notify their medical professional liability insurer before volunteering in response to a disaster?**

A. Health care professionals are required to notify their medical professional liability (MPL) insurer if they plan to practice medicine outside the area and scope of their policy, including disaster volunteerism. This may not always be possible, however, if the disaster is of such magnitude that communications have been disrupted.

**Q. Would it be helpful to expand the *Federal Tort Claims Act* to include medical volunteers?**

A. Expanding the *Federal Tort Claims Act* to include medical volunteers in a disaster area would serve simply to shift who bears the financial burden associated with a medical liability claim. It does not, however, address the concern that the mere threat of facing a non-meritorious lawsuit, not simply the risk of paying damages, is what deters medical professionals from volunteering. Whether the payer is the federal government or the liability insurer is frequently of less concern to the volunteer than is the potential threat of facing the lawsuit in and of itself.

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

A. No. The legislation provides limited Good Samaritan protection to licensed health care professionals who volunteer to provide needed health care services to victims during a declared national disaster. The protection is limited. It still allows individuals to sue if the harm is caused by willful or criminal misconduct, gross negligence, reckless

misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed; or if the professional who rendered the health care services was under the influence of an intoxicating substance. We are open, if deemed necessary, to further amending the bill language to clarify that the protections in the legislation apply only to the provision of medical and healthcare services.

**Q. Would this bill allow medical volunteers to practice medicine outside the scope of their normal practice?**

A. No. The bill includes a provision requiring health care providers to only offer services within the scope allowed by their state of licensure/registration/certification, regardless of where the treatment is provided.

**Q. Why is it not sufficient to require medical volunteers to present their medical license on site (of large-scale disaster)?**

A. The Good Samaritan Health Professionals Act does not directly address issues related to licensure. It is narrowly written to address issues related to medical liability. In addition, verifying licensure would not necessarily address liability concerns, as states have differing requirements for liability coverage.

**Q. Does current liability law discourage volunteers during a time of emergency or do they just go?**

A. As with any circumstances, some individuals will rush in to help no matter the level of risk to which they may be exposing themselves. However, the fact that a healthcare professional could be sued for providing potentially life-saving care, without compensation, under extremely difficult circumstances, certainly deters others from providing aid. In the event of a large-scale disaster necessitating a federal declaration, it is only appropriate to encourage more volunteerism by highly trained professionals via the granting of limited liability protections.

**Q. Wouldn't it just be easier for states to set up reciprocity agreements with their neighboring states ahead of the next large-scale disaster?**

A. In fact, it would not. First, given that the fact that the bill only applies to federally declared disasters, it is easier, and more appropriate, to create the suggested liability protection at the federal level. Second, in the event of a large scale disaster, it may be necessary to bring in volunteers from outside neighboring jurisdictions. 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.

**Q. Why isn't the *Volunteer Protection Act of 1997* sufficient?**

A. The *Volunteer Protection Act of 1997* only covers volunteers who volunteer in their home states with a nonprofit organization or a government entity. It does not cover out of state

providers who are not licensed in the state where the emergency occurs, nor does it address the kind of spontaneous volunteerism which could be expected in the event of a large scale disaster. The *Good Samaritan Health Professionals Act* addresses these gaps in policy.

## **Additional Frequently Asked Questions**

### **Q. Why can't states solve this problem themselves through state law?**

- A. This is an interstate problem. Even in cases where states have waived licensure requirements for out of state practitioners or have mutual assistance agreements with other states, needed health care professionals have been delayed or turned away over liability concerns because it is unclear whether the existing Good Samaritan laws apply.

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 large-scale disaster where the state has asked for federal assistance.

### **Q. Does the bill pre-empt state law?**

- A. The bill explicitly recognizes state laws that provide stronger protections to volunteer health professionals. In addition, states remain wholly responsible for licensing health professionals.

### **Q. Does the bill license doctors to practice out of state?**

- A. No. The states continue to be wholly responsible for licensure and can limit or expand a volunteer health professional's scope of practice as needed or bar them from providing services altogether. The federal Good Samaritan protection kicks in only when a state asks for federal assistance. As a practical matter, states often waive licensure requirements during major health care emergencies. In very large emergencies, the Good Samaritan protection needs to be separate from licensure and provided at the federal level.

### **Q. The National Disaster Medical System (NDMS), which provides medical services when a disaster overwhelms local emergency services, and the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) and other volunteer registration systems that take care of licenses, are already in place. States also have interstate mutual assistance agreements. Aren't these systems sufficient?**

- A. No. In previous large-scale disasters, these systems have not been adequate and private volunteers were needed to provide surge capacity. In addition, communication systems frequently collapse during catastrophic emergencies making it impossible to check if a provider is on a state or federal emergency responders list. There are documented cases after 9/11 and Katrina of needed health care volunteers who were NDMS and ESAR-VHP participants that were turned away due to liability concerns because their

registration status or state license could not be confirmed. A federal standard would eliminate this confusion by providing clear civil immunity at the federal level for all health care volunteers who respond to a national emergency.

**Q. What is the federal cost associated with the Good Samaritan Health Professionals Act?**

**A.** The bill does not require any federal expenditures.