

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1073
(Human Services Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 37-17.3 and a new section to chapter 65-06 of the North Dakota Century Code, relating to adoption of the Uniform Emergency Volunteer Health Practitioners Act and workers' compensation coverage of volunteers; and to amend and reenact section 65-06-05 of the North Dakota Century Code, relating to workers' compensation coverage of volunteers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

37-17.3-01. Definitions. In this chapter, unless the context otherwise requires:

1. "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 which:
 - a. 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, the state department of health, or the state board of animal health; or
 - b. Regularly plans and conducts its activities in coordination with an agency of the federal government, the state department of health, or the state board of animal health.
2. "Emergency" means an event or condition that is a disaster or an emergency as defined under chapter 37-17.1 and any event, condition, or incident for which the deployment of volunteer health practitioners is determined to be necessary by the state health officer, a local board of health, or the state veterinarian.
3. "Emergency declaration" means a declaration or proclamation of disaster or emergency issued by the governor.
4. "Emergency management assistance compact" means the interstate compact approved by Congress by Public Law No. 104-321 [110 Stat. 3877].
5. "Entity" means a person other than an individual.
6. "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.
7. "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services and any other individual performing nonmedical support disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state department of health or a local public health unit and deployed through the emergency system for advance registration of volunteer health professionals.

8. "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:
 - a. The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:
 - (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and
 - (2) Counseling, assessment, procedures, or other services;
 - b. Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and
 - c. Funeral, cremation, cemetery, or other mortuary services.
9. "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.
10. "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 this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.
11. "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.
12. "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 animal populations, to the extent necessary to respond to an emergency, including:
 - a. Diagnosing, treating, or preventing an animal disease, injury, or other physical or mental condition by prescribing, administering, or dispensing vaccine, medicine, surgery, or therapy;
 - b. Using a procedure for reproductive management; and
 - c. Monitoring and treating animal populations for diseases that have spread or demonstrate the potential to spread to humans.
13. "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 this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state during an emergency.

37-17.3-02. Applicability to volunteer health practitioners. This chapter applies to volunteer health practitioners registered with a registration system that complies with section 37-17.3-04 and who provide health or veterinary services in this state for a host entity during an emergency.

37-17.3-03. Regulation of services during emergencies.

1. During an emergency, the state department of health or the state board of animal health may limit, restrict, or otherwise regulate:
 - a. The duration of practice by volunteer health practitioners;
 - b. The geographical areas in which volunteer health practitioners may practice;
 - c. The types of volunteer health practitioners who may practice; and
 - d. Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.
2. An order issued under subsection 1 may take effect immediately, without prior notice or comment, and is not a rule within the meaning of chapter 28-32.
3. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:
 - a. Consult and coordinate its activities with the state department of health or the state board of animal health to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and
 - b. Comply with any laws other than this chapter relating to the management of emergency health or veterinary services, including chapters 23-27 and 43-29.

37-17.3-04. Volunteer health practitioner registration systems.

1. In the case of a volunteer health practitioner whose principal practice is located in this state and who is licensed by a North Dakota professional board or agency, the volunteer health practitioner registration system is the emergency system for advance registration of volunteer health professionals and is maintained by the state department of health and is known as the public health emergency volunteer medical reserve corps.
2. In the case of a volunteer health practitioner who is not covered under subsection 1, the volunteer health practitioner registration system is the system established under subsection 1 or a system that qualifies under this subsection. To qualify as a volunteer health practitioner registration system under this subsection, a system must:
 - a. Accept applications for the registration of volunteer health practitioners before or during an emergency;
 - b. Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;
 - c. 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 chapter; and
 - d. Meet one of the following conditions:
 - (1) Be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the United States department of health and human services under section 319I of the Public Health Services Act [42 U.S.C. 247d-7b];
 - (2) 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]; or
 - (3) Be operated by a:

- (a) Disaster relief organization;
 - (b) Licensing board;
 - (c) National or regional association of licensing boards or health practitioners;
 - (d) Health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or
 - (e) Governmental entity.
3. During an emergency, the state department of health, a person authorized to act on behalf of the state department of health, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection 1 or 2. 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.
4. Upon request of a person in this state authorized under subsection 3, 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.
5. 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.

37-17.3-05. Recognition of volunteer health practitioners licensed in other states.

1. During an emergency, a volunteer health practitioner, registered with a registration system that complies with section 37-17.3-04 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.
2. A volunteer health practitioner qualified under subsection 1 is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

37-17.3-06. No effect on credentialing and privileging.

1. In this section:
- a. "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.
 - b. "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.
2. This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards during an emergency.

37-17.3-07. Provision of volunteer health or veterinary services - Administrative sanctions.

1. Subject to subsections 2 and 3, 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.
2. Except as otherwise provided in subsection 3, this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.
3. The state department of health or the state board of animal health may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of chapter 28-32.
4. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.
5. A volunteer health practitioner does not engage in unauthorized practice unless the practitioner 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 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:
 - a. 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
 - b. 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.
6. In addition to the authority granted by law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:
 - a. 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;
 - b. 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
 - c. 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.
7. In determining whether to impose administrative sanctions under subsection 6, 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.

37-17.3-08. Relation to other laws.

1. This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection 2, this chapter does not affect requirements for the use of health practitioners pursuant to the emergency management assistance compact.

2. The department of emergency services, pursuant to the emergency management assistance compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

37-17.3-09. Regulatory authority. The health council may adopt rules to implement this chapter. In doing so, the health council shall consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible.

37-17.3-10. Limitations on civil liability for volunteer health practitioners.

1. Subject to subsection 3, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is not liable for damages for an act or omission of the practitioner in providing those services.
2. A person is not vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection 1.
3. This section does not limit the liability of a volunteer health practitioner for:
 - a. Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
 - b. An intentional tort;
 - c. Breach of contract;
 - d. A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or
 - e. An act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.
4. A person that, pursuant to this chapter, 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.
5. In addition to the immunity provided in subsection 1, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is entitled to all the rights, privileges, or immunities provided by state laws limiting liability of volunteers.

37-17.3-11. Workers' compensation coverage.

1. Except as provided in subsection 2, a volunteer health practitioner who dies or is injured as the result of providing health or veterinary services as provided under this chapter is not considered to be an employee of this state for the purpose of receiving benefits under title 65 and must be treated for the purposes of North Dakota law as an individual eligible for workers' compensation or similar benefits under the law of the state in which the volunteer is qualified for service under an emergency system for advance registration of volunteer health practitioners authorized under subsection 2 of section 37-17.3-04.
2. A volunteer health practitioner whose principal practice is located in this state and who is licensed by a North Dakota professional board or agency who dies or is injured as a result of providing health or veterinary services as provided under this chapter is eligible for benefits as provided under title 65 if the volunteer is qualified and serving under the emergency system for advance registration of volunteer health practitioners of this state under subsection 1 of section 37-17.3-04.

SECTION 2. AMENDMENT. Section 65-06-05 of the North Dakota Century Code is amended and reenacted as follows:

65-06-05. Reimbursement by state for liability in excess of premiums collected. Whenever liability on claims against the fund credited to the classification of ~~volunteer emergency or disaster emergency~~ volunteers and trainees or volunteer health practitioners as defined under chapter 37-17.3 exceeds the amount of premiums paid into ~~such~~ the fund, such excess liabilities ~~shall be~~ are a general obligation of the state of North Dakota and must be reimbursed to the organization for credit to the workforce safety and insurance fund by legislative appropriation.

SECTION 3. A new section to chapter 65-06 of the North Dakota Century Code is created and enacted as follows:

Uniform Emergency Volunteer Health Practitioners Act - Health practitioners. A volunteer health practitioner under subsection 2 of section 37-17.3-11 is eligible for benefits as provided under this chapter.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1073.

House Vote: Yeas 91 Nays 1 Absent 0

Senate Vote: Yeas 42 Nays 0 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State