

 **STATE OF NEW YORK
DEPARTMENT OF HEALTH**

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

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Dear Planning Partner:

I am writing to inform you of a recently enacted New York State law that grants immunity from liability to authorized volunteers performing emergency response duties as defined in a comprehensive emergency management plan (CEMP). Immunity from liability means that a New York court of law cannot assess damages against a person in the event of a lawsuit involving covered duties. This immunity may apply to volunteers in the medical reserve corps (MRC), Citizen Corps, and other volunteers. The Department of Health urges all planning partners to consult with their legal counsel to determine whether this immunity applies to their particular volunteers and activities.

On June 22, 2010, the Governor signed Chapter 56, Part B, of the Laws of 2010, effective July 1, 2010. Under the new law, "disaster emergency response personnel" is defined to include "affiliated volunteers having responsibilities under a comprehensive emergency management plan." See Executive Law § 20(2)(g). The new legislation further provides: "During a disaster ... drill or exercise, disaster emergency response personnel ... shall possess the same powers, duties, rights, privileges and immunities as are applicable in a civil defense drill ... under the provisions of the New York state defense emergency act." See Executive Law § 29-b(1). The Defense Emergency Act, in turn, provides:

... any political subdivision, municipal or volunteer agency ... performing civil defense services in this state pursuant to an arrangement, agreement or compact for mutual aid and assistance, or any [agent thereof] ... in good faith carrying out, complying with or attempting to comply with any law ... or order ..., any federal law, or any arrangement, agreement or compact for mutual aid and assistance or any order issued by federal or state military authorities, relating to civil defense ... shall not be liable for any injury or death to persons or damage to property as the result thereof.

See Unconsolidated Laws of New York, Chapter 131 § 113(3).

Although the new legislation has not been tested in court, on its face it requires that those seeking immunity:

- (1) be employed by an agency or governmental entity or be a volunteer formally affiliated with an agency or governmental entity;
- (2) have duties or responsibilities pursuant to or under a state or local government CEMP; and
- (3) be deployed through an affiliated agency to respond to a declared disaster or disaster drill or exercise under the State Disaster Preparedness Commission.

The Department of Health recognizes that volunteers are a crucial part of emergency planning and that issues involving volunteer liability are of great interest to counties, health care workers, volunteers, and other planning partners. We hope that you will find this information useful as you engage in your disaster preparedness activities. Once again, I strongly recommend that you consult with legal counsel to review this legislation and determine whether it may assist you in your particular circumstances. In particular, county planning partners are advised to consult with counsel to determine whether their MRC, Citizen Corp, and other volunteers fall within the new definition of "disaster emergency response personnel."

Very truly yours,



Thomas Conway,
General Counsel