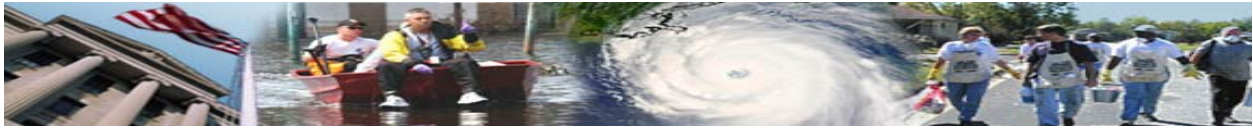


# Good Samaritan Entity Liability Protection



## Frequently Asked Questions

### **Q. Why do we need Good Samaritan Entity Liability Protection?**

Most state Good Samaritan laws provide civil immunity for some individuals acting in good faith to provide assistance in an emergency. These laws were designed to create incentives for individuals, particularly licensed health care practitioners, to come to the aid of others without the fear of liability.

In the wake of recent catastrophes such as 9/11, SARS, and Hurricane Katrina, states are making a concerted effort to prepare for the next disaster. The need for government agencies to partner with private and non-profit organizations to maximize response capacity and effectiveness is widely acknowledged.

However, most state Good Samaritan laws leave significant gaps of liability exposure for both private and non-profit organizations that are willing to assist government agencies in responding to an emergency posed by a natural disaster, emerging infection, or terrorist event. The Good Samaritan Entity Liability Protection Initiative was developed to address this pressing gap in emergency legal preparedness, and to create incentives for private and non-profit entities to join with government agencies as they prepare for, and respond to, the next public health emergency.

### **Q. What is a good practical example of the need for this legal change?**

In a pandemic flu event, governments will need the voluntary assistance and experience of business and non-profit entities to help manage the rapid distribution of antiviral medications to key workers and/or to large population groups. Without entity liability protection, business and non-profit entities, acting in good faith to assist in emergency distributions, remain legally exposed to the liability for the adverse reactions that will occur when such medications are administered.

### **Q. Won't businesses and non-profits help anyway during an emergency?**

The problem is timing and services. Because of concern about liability, private and non-profit sector entities may hesitate to volunteer at the earliest moment when assistance would be most effective. In addition, liability concerns create an incentive for private entities only to provide financial assistance, rather than their service and expertise that will be most important in an emergency. Businesses and non-profits need to be engaged in pre-crisis training and surge capacity planning; liability concerns can be a barrier to the robust participation that is desired by emergency planners.

**Q. Are businesses and non-profits completely escaping responsibility for their actions?**

No, this initiative only covers “good faith” actions of volunteer entities during emergencies. Like other Good Samaritan coverage, it does not protect intentional, wanton, or reckless conduct. In addition, the scope of this protection only applies to voluntary actions carried out in coordination with a governmental agency’s emergency response.

**Q. Why is this initiative structured as a state legislative approach rather than seeking federal legislation?**

This important issue requires change at both the state and federal legislative levels. Although some federal liability proposals have already been developed for the U.S. Congress, this initiative focuses attention on the state level. State laws vary from jurisdiction to jurisdiction; hence a "one-size-fits-all" approach may not apply in all situations and may not resolve individual state law complexities. Many private sector leaders feel more comfortable with the coverage being triggered by a Governor-declared emergency, rather than waiting for a federal declaration. If leadership coming from the states results in a series of state legislative enactments, then such success can make the eventual option of federal legislation easier to achieve.

**Q. Will this initiative result in increased state liability exposure?**

No, this should result in a decrease in state liability. Lawsuits based upon a "failure to prepare" theory have been brought against government agencies following the 2003 Toronto SARS and 2005 Hurricane Katrina emergency events. The public/private/non-profit partnerships contemplated under this initiative can both decrease the risk of harm to individuals and serve as evidence that state agencies have taken prudent steps to prepare for emergency situations. The normal principles of sovereign immunity are not altered by this initiative.

**Q. How do you respond to concerns about a reduction in individuals' ability to pursue negligence claims?**

First, it is in an individual's interest for there to be legal incentives for businesses and non-profit entities to give immediate assistance to people at their critical moment of need, without being deterred by potential liability exposure. This is the same legislative logic behind the original Good Samaritan protection applied in the past to individuals. Second, this initiative is narrow in scope and only applies to those activities in a Governor-declared emergency conducted in coordination with a governmental agency. Third, this legislative proposal is not designed to become a vehicle for others to add additional tort reform changes to this preparedness initiative.

**Q. What about the liability of individual volunteers in these situations?**

This initiative focuses on the liability of entities, rather than individual persons. Significant work has already been done, and new initiatives are already underway, pertaining to individual volunteers in emergency situations. The scope of this initiative does not attempt to address

the various volunteer-related issues for individuals that do not directly relate to this immediate need to extend Good Samaritan coverage to business and non-profit entities. Additional information on healthcare volunteer liability from the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities can be found at [www.publichealthlaw.net](http://www.publichealthlaw.net). Details regarding the Uniform Emergency Volunteer Health Practitioner's Act from the National Conference of Commissioners on Uniform State Laws can be found at [www.uevhpa.org](http://www.uevhpa.org). Furthermore, information regarding individual liability protection for architects and engineers can be found at [www.aia.org](http://www.aia.org).

**Q. What part of my state law actually needs to be changed?**

States wishing to extend liability coverage to entities voluntarily assisting in emergency situations will need to look at both the Good Samaritan and the Emergency Management sections of their state codes in order to determine which specific modification approach best suits their particular code context. Model Bill Language and five different state examples can be found in this Toolkit under [Key Elements and Sample Bill Language](#). The technical legislative drafting for this initiative to fit particular state's code is not a complex task for an experienced legislative drafter.