STATE OF NEW YORK

8564

IN SENATE

June 16, 2020

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to enacting the "uniform emergency volunteer health practitioners act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "uniform emergency volunteer health practitioners act".

§ 2. Legislative findings. The legislature finds that in times of emergencies that it may be necessary to rapidly deploy health service workers from out-of-state. For such necessities, it is beneficial to have a registry and uniform system of rules to deploy the relevant workers with minimal complications. Accordingly, this legislature adopts the "uniform emergency volunteer health practitioners act" in New York.

§ 3. The public health law is amended by adding a new article 30-E to read as follows:

ARTICLE 30-E

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

Section 3083. Definitions.
3084. Applicability to volunteer health practitioners.
3085. Regulation of services during emergency.
3086. Volunteer health practitioner registration systems.
3087. Recognition of volunteer health practitioners licensed in other states.
3088. No effect on credentialing and privileging.
3089. Provision of volunteer health or veterinary services; administrative sanctions.
3090. Relation to other laws.
3091. Regulatory authority.
3092. Limitations on civil liability for volunteer health practitioners; vicarious liability.
3093. Workers' compensation coverage.
3094. Uniformity of application and construction.

§ 3083. Definitions. As used in in this article:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1. "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

2. "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 that:

(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, or New York state division of homeland security and emergency services, or of the state disaster preparedness commission empowered by section twenty-one of the executive law; or

(b) regularly plans and conducts its activities in coordination with an agency of the federal government or the New York state division of homeland security and emergency services.

3. "Emergency" means an event or condition that is an emergency, disaster, or public health emergency defined as a disaster under article two-B of the executive law.

4. "Emergency declaration" means a declaration of emergency issued by a person authorized to do so under the laws of this state, including as defined in section twenty-eight of the executive law, a political subdivision of this state, or a municipality or other local government within this state.

5. "Emergency management assistance compact" means the interstate compact approved by Congress by Public Law No. 104-321,110 Stat. 3877 and codified in New York as section twenty-nine-g of the executive law.

6. "Entity" means a person other than an individual.

7. "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

8. "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

9. "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:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) 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.

10. "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.

11. "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.

12. "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

13. "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.

14. "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.

15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

16. "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 to animal populations, to the extent necessary to respond to an emergency, including:

(a) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;

(b) use of a procedure for reproductive management; and

(c) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

17. "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 while an emergency declaration is in effect.

§ 3084. Applicability to volunteer health practitioners. This article shall apply to volunteer health practitioners registered with a registration system that complies with section three thousand eighty-six of this article and who provides health or veterinary services in this state for a host entity while an emergency declaration is in effect.

§ 3085. Regulation of services during emergency. 1. While an emergency declaration is in effect, the New York state division of homeland security and emergency services 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 pursuant to subdivision one of this section may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the state administrative procedure act.

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 New York state division of homeland security and emergency services to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(b) comply with any other laws relating to the management of emergency health or veterinary services, including under article two-B of the executive law.

§ 3086. Volunteer health practitioner registration systems. 1. To qualify as a volunteer health practitioner registration system, a system shall:

(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 article; and

(d) meet one of the following conditions:

(i) be an emergency system for advance registration of volunteer healthcare practitioners established by a state and funded through the department of health and human services under Section 319 of the Public Health Services Act, 42 USC Section 247d-7b, as amended;

(ii) 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. Section 300hh, as amended;

(iii) 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; or

(iv) be designated by New York state division of homeland security and emergency services as a registration system for purposes of this article.

2. While an emergency declaration is in effect, New York state division of homeland security and emergency services, a person authorized to act on behalf of New York state division of homeland security and emergency services, or a host entity, may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subdivision one of this section. Confirmation shall be 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.

3. Upon request of a person in this state authorized under subdivision two of this section, 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.

4. A host entity shall not be 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.

§ 3087. Recognition of volunteer health practitioners licensed in other states. 1. While a state disaster emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with section three thousand eighty-six of this article 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 article as if the practitioner were licensed in this state.

2. A volunteer health practitioner qualified under subdivision one of this section is not entitled to the protections of this article 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.

§ 3088. No effect on credentialing and privileging. This article shall not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

§ 3089. Provision of volunteer health or veterinary services; administrative sanctions. 1. Subject to subdivisions two and three of this section, 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 subdivision three, this article shall 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 New York state division of homeland security and emergency services may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this article. An order under this subdivision may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the state administrative procedure act.

4. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this article.

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 any other law of this state 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 subdivision six of this section, 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.

§ 3090. Relation to other laws. 1. This article shall not limit rights, privileges, or immunities provided to volunteer health practitioners by any other law. Except as otherwise provided in subdivision two of this section, this article shall not affect requirements for the use of health practitioners pursuant to the emergency management assistance compact.

2. The New York state division of homeland security and 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.

§ 3091. Regulatory authority. The New York state division of homeland security and emergency services may promulgate rules to implement this article. In doing so, the New York state division of homeland security and emergency services shall consult with and consider the recommendations of the entity established to coordinate the implementation of the emergency management assistance compact and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this article and make the emergency response systems in the various states reasonably compatible.

§ 3092. Limitations on civil liability for volunteer health practitioners; vicarious liability. 1. Subject to subdivision two of this section, a volunteer health practitioner who receives compensation of five hundred dollars or less per year for providing health or veterinary services pursuant to this article is not liable for damages for an act or omission of the practitioner in providing those services. Reimbursement of, or allowance for, reasonable expenses, or continuation of salary or other remuneration while on leave, is not compensation under this subdivision.

2. This section shall 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.

3. A person that, pursuant to this article, 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.

4. In addition to the protections provided in subdivision one of this section, a volunteer health practitioner who provides health or veterinary services pursuant to this article is entitled to all the rights, privileges, or immunities provided by section twenty-nine-g of the executive law.

§ 3093. Workers' compensation coverage. 1. In this section, "injury" means a physical or mental injury or disease for which an employee of this state who is injured or contracts a disease in the course of the employee's employment would be entitled to benefits under the workers' compensation law.

2. A volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this article shall be deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers' compensation law if:

(a) the practitioner is not otherwise eligible for such benefits for the injury or death under the law of this or another state; and

(b) the practitioner, or in the case of death, the practitioner's personal representative, elects coverage under the workers' compensation law by making a claim under such law.

3. The New York state division of homeland security and emergency services shall adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits for injury or death under the workers' compensation law by volunteer health practitioners who reside in other states, and may waive or modify requirements for filing, processing, and paying claims that unreasonably burden the practitioners. To promote uniformity of application of this article with other states that enact similar legislation, the New York state division of homeland security and emergency services shall consult with and consider the practices for filing, processing, and paying claims by agencies with similar authority in other states.

§ 3094. Uniformity of application and construction. In applying and construing this article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 4. This act shall take effect immediately.