

## Volunteering to Administer the H1N1 Vaccinations

On April 26, 2009, the Department of Health and Human Services issued a nationwide public health emergency (PHE) declaration in response to human infections with a newly discovered H1N1 virus. The formal declaration of a PHE is a tool that facilitates HHS' preparation and mobilization for disasters and emergencies. That declaration was renewed on June 24, 2009. As a part of the community mitigation plans, nurses and other clinical health professionals may be asked by community or religious organizations to assist with vaccinating member of the community.

The Office of Commissioned Corps Force Management and the Office of the Surgeon General received numerous inquiries from officers volunteering to assist with flu prevention activities, including administering vaccinations. The following answers to "Frequently Asked Questions" are being provided as a guide for making decisions regarding volunteering to provide vaccinations outside of normal duties as an officer of the Commissioned Corps of the United States Public Health Service (Corps).

Note: Before entering into any volunteer health care provider situation, officers should understand the potential for liability and/or civil suits regarding their actions.

**Question 1:** May Corps officers volunteer in the community (non-agency sponsored activity) to provide immunizations? What, if any, issues or concerns are there if they do?

**Answer 1:** Assuming that the volunteer activity does not conflict with their official duties as a Corps officer, an officer is free to volunteer to provide immunizations, whether through their parent agency or an outside entity. A volunteer administering immunizations will need to be a qualified health professional and will need to possess a current and appropriate license, as discussed in response to question numbers 2 and 4. Officers need to follow their agency policies regarding approval and processing of outside activity forms.

**Question 2:** Do officers who volunteer need to have a local state license?

**Answer 2:** Yes. However, there are circumstances under which a licensed practitioner in one state may practice in another. For example, the qualified health professional may not be required to maintain a local state license in the state in which a PHE has been declared. Many states have emergency management laws that allow volunteers licensed in another state to provide health care assistance in the affected state, and governors may temporarily waive state licensing requirements during a PHE. Please note this assumes the governor has issued a PHE declaration. Mutual aid compacts, such as the Emergency Management Assistance Compact, also enable licensed or credentialed volunteers in one state to assist an affected state when the governor of that state declares an emergency and requests aid pursuant to the compact. In addition, volunteers associated with an organization such as the Red Cross, which has negotiated reciprocal licensing agreements with a particular state, should be able to provide immunization assistance where the volunteer is not licensed.

**Question 3:** Do officers need to complete an outside activity request when volunteering to give vaccinations during non-duty hours and outside of their usual responsibilities? (See form HHS-520, "Request for Approval of Outside Activities," at [http://dcp.psc.gov/cc\\_forms.asp](http://dcp.psc.gov/cc_forms.asp).)

**Answer 3:** Yes. Officers are required to submit a request to engage in certain outside employment and activities, with or without compensation, when, for instance, they are providing professional or consultative services. If officers have any questions regarding outside employment or other activities, they should consult their supervisor and/or ethics officials.

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**Question 4.** Are officers who volunteer to give seasonal flu and H1N1 vaccinations covered under the Good Samaritan or other laws if there are any negative outcomes?

**Answer 4:** Various Federal and state laws may be available to provide immunity from allegations of negligence to officers voluntarily providing immunizations. Officers administering H1N1 influenza vaccines will likely have liability coverage pursuant to the Public Readiness and Emergency Response Act ("PREP Act"), 42 U.S.C. § 247d-6d. The PREP Act provides immunity to qualified persons and program planners involved in the distribution, use and administration of a covered countermeasure to a disease, or other health condition that constitutes, or may in the future constitute a PHE.

Persons covered by the PREP Act include any qualified person, defined as a licensed health professional or other individual "who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed or a person within a category of persons so identified in a declaration by the Secretary." 42 U.S.C. § 247d-6d(i)(8). In addition, providers employed by state or local governments may be covered as program planners, which include persons "employed by the State or local government, or other person who supervised or administered a program with respect to a countermeasure or a qualified pandemic or epidemic product." 42 U.S.C. § 247d-6d(i)(6). The PREP Act's immunity provision provides, in part, that a covered person shall be immune from suit for claims relating to loss "caused by, arising out of, relating to, or resulting from the administration or the use by an individual of a covered countermeasure...if a declaration has been issued." 42 U.S.C. § 247d-6d(a)(1). Coverage applies only if the countermeasure is administered or used during the effective period of the declaration. On June 25, 2009, Secretary Sebelius amended a January 26, 2007 Pandemic Influenza Vaccines Declaration to include H1N1 influenza vaccines as a covered countermeasure through March 31, 2013. Details about the PREP Act and Secretary's declaration may be found at:

<http://www.hhs.gov/disasters/discussion/planners/prepact/>

In addition, the Volunteer Protection Act, 42 U.S.C. §§ 14501, *et seq.*, provides qualified immunity to providers volunteering at nonprofit organizations or government entities. At the state level, Good Samaritan laws, emergency management laws, state volunteer protection acts and gubernatorial orders in response to public health emergencies may all provide immunity to volunteers accused of acting negligently in the administration of vaccines. However, because liability protection varies from state to state, such laws may not apply to all health care providers delivering voluntary emergency care. Furthermore, many state and Federal laws contain provisions denying liability coverage to health care providers who willfully cause injury to others or otherwise act in a criminal manner, and health care providers should ensure they act within the scope of their volunteer responsibilities at all times to maintain liability protection under the various laws.

**Question 5.** Are there any other concerns related to tort that could/should be addressed related to volunteer activities?

**Answer 5:** To the extent that PREP Act immunity applies to the activities of volunteers providing H1N1 immunizations, as either qualified persons or program planners, it would bar tort suits against that provider in an individual capacity that would normally be filed pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680, as well as tort suits that would ordinarily be filed under state and local laws.

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**Question 6.** May an officer report to or perform activities at a non-HHS directed (or in the case of officers on detail, non-agency/non-program directed) volunteer activity while wearing a PHS uniform?

**Answer 6:** No. The PHS uniform must be worn in accordance with policies issued by the Assistant Secretary for Health and under the direction of the National Uniform Authority. At present, there is no authority for the wear of the PHS uniform when performing duties on behalf of a non-Federal entity unless an officer is placed on official temporary duty or detailed to that organization.