

## **Appendix D-1: Overview of Nebraska Rules and Regulations**

For the full text of all Nebraska rules and regulations that apply to the Health and Human Services System, see: <https://dhhs.ne.gov/pages/dhhs-regulations.aspx>

### **Regional Governing Boards**

Unlike the requirements for services and facilities (see below), the Regional Governing Boards must have a written plan to respond to psychosocial needs of disaster victims in their coverage area.<sup>1</sup> Up to this point, this requirement has been unfunded and un-enforced.

### **Nebraska Critical Incident Stress Management Program**

The Nebraska Critical Incident Stress Management Program (CISM) is established by statute to serve the psychosocial needs of first responder groups.<sup>2</sup> CISM is the only statutorily created program in Nebraska for responding to psychosocial needs of those involved in a disaster. This program serves the psychosocial needs of responder groups, and the spouse/significant/other/adult relative living in the same household (*not disaster survivors*). Responder groups served are: Law enforcement, firefighters, EMS, dispatchers, hospital personnel, corrections personnel, local or state emergency management and responders deployed through emergency management.

### **Nebraska Emergency Management Act**

#### **Governor's Declaration of Disaster**

The Nebraska Emergency Management Agency is responsible for carrying out the provisions of the Emergency Management Act. All state agencies and political subdivisions of the state are required to cooperate and extend their services and facilities for the purposes of disaster response upon request.<sup>3</sup>

In the event of a disaster declaration by the Governor, the Governor may “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the disaster, emergency, or civil defense emergency.”<sup>4</sup> Requests for such an action by the Governor must be sent through the Nebraska Emergency Management Agency.

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<sup>1</sup> NAC Title 204 Chapter 3

<sup>2</sup> Nebraska Critical Incident Stress Management Act §§ 71-7101 to 71-7113; see also NAC Title 176 Chapter 1

<sup>3</sup> Nebraska Emergency Management Act § 81-829.60

<sup>4</sup> Nebraska Emergency Management Act § 81-829.40

## **Responders/Volunteer**

### ***Emergency Response Team***

Under the Nebraska Emergency Management Act, a roster of persons with training and skills for disaster response will be established.<sup>5</sup> Only the people who appear on such a roster will be considered members of a disaster response team.<sup>6</sup> This makes it essential to establish a roster of persons across the state who can and will respond to psychosocial needs of disaster survivors and communities. It may be necessary for behavioral health disaster responders to join with an already existing and recognized disaster response team, or to establish their own teams specializing in behavioral health.

### ***Release of State Employees for Red Cross Service***

Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave for disaster response with the authorization of his or her supervisor. This leave is not to exceed fifteen working days in each calendar year. This specifically includes “all administrative, professional, academic, and other personnel of the University of Nebraska, the state colleges, and the State Department of Education.”<sup>7</sup> This potentially creates an avenue for employees to respond to disaster situations within organized response structures and obtain valuable experience and training.

### ***From Other States – Licensure/Certification***

Local emergency management directors or coordinators are responsible for developing mutual aid arrangements for reciprocal aid and assistance in the event of a disaster or emergency.<sup>8</sup> Subject to the approval of the Governor, this includes developing mutual aid arrangements with agencies and organizations in other states. Licensure or certification in another state will be recognized as evidence of qualification for utilizing the licensed skills for disaster response in the state of Nebraska.<sup>9</sup>

### **Nebraska Mental Health Commitment Act**

A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous, and likely to harm his/herself or others before mental health board proceedings under the Nebraska Mental Health Commitment Act may be initiated to obtain custody of the person, may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to the nearest appropriate and available medical facility and shall not be placed in a jail.<sup>10</sup> More information about Nebraska’s Commitment Act is available at : <https://dhhs.ne.gov/Pages/Mental-Health-Commitment.aspx>

<sup>5</sup> Nebraska Emergency Management Act § 81-829.41

<sup>6</sup> Nebraska Emergency Management Act § 81-829.52

<sup>7</sup> Nebraska Law § 81-1391

<sup>8</sup> Nebraska Emergency Management Act § 81-829.48

<sup>9</sup> Nebraska Emergency Management Act § 81-829.56

<sup>10</sup> Nebraska Law § 71-919

## **Privacy and Security Rules (HIPAA and FERPA)**

### **Health Insurance Portability and Accountability Act (HIPAA)**

The HIPAA Privacy Rule requires covered entities to protect individuals' health records and other identifiable health information. The Secretary of HHS (Federal) can waive provisions of the Rule under the Project Bioshield Act of 2004 (PL 108-276) and section 1135(b)(7) of the Social Security Act. Regardless of the activation of a waiver, HIPAA permits disclosures for treatment purposes and for some disclosures to disaster relief organizations. For example, covered entities can share patient information with the Red Cross so it can notify family members of the patients location (45 CFR 164.510(b)(4)).

**The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for national priority purposes<sup>11</sup>, including:**

- ***Law Enforcement Purposes.*** Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following *six* circumstances:
  - As required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests.
  - To identify or locate a suspect, fugitive, material witness, or missing person.
  - In response to a law enforcement official's request for information about a victim or suspected victim of a crime.
  - To alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death.
  - When a covered entity believes that protected health information is evidence of a crime that occurred on its premises.
  - By a covered health care provider in a medical emergency not occurring on its premises, when necessary, to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.
- ***Serious Threat to Health or Safety.*** Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public.
  - Disclosure must be made to someone they believe can prevent or lessen the threat (including the target of the threat).
  - May also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal.

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<sup>11</sup> See 45 C.F.R. § 164.512

### **Family Educational Rights and Privacy Act (FERPA)**

The Family Educational Rights and Privacy Act (FERPA)<sup>12</sup> is a Federal law that protects the privacy of student education records.

- Applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
- Schools must have written permission from the parent or eligible student in order to release any information from a student's education record.
- EXCEPT, schools may disclose records, without consent, to certain parties under specific conditions, including the following:
  - To comply with a judicial order or lawfully issued subpoena.
  - Appropriate officials in cases of health and safety emergencies.
  - State and local authorities, within a juvenile justice system, pursuant to specific state law.

### **Health Care Facilities and Services Licensure/Accreditation**

Facility licensure requirements<sup>13</sup> general address disaster preparedness in terms of meeting physical needs and continuation of services, but do not address psychological consequences of disaster.

This also applies to certification of aging services and mental health programs.<sup>14</sup>

**NAC Title 175** requires facilities address disaster preparedness in terms of meeting physical needs of clients and the continuation of services.<sup>15</sup>

- Facilities must have a plan for addressing emergency care and treatment of clients, including approved interventions to be used in a client emergency.
  - This may apply to health and medical emergencies, as well as violence toward other clients and staff.
- Staff must be trained in emergency procedures during their initial orientation after hire.

**Council on Accreditation (COA)** (accreditation for child & family services, and behavioral health services)

- Requires organizations to develop an emergency response plan
  - Plan must address a variety of situations including hostage situations, bomb threats, and unlawful intrusion.
  - Must also include continuity of operations in the plan.

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<sup>12</sup> U.S.C. § 1232g; <sup>34</sup> CFR Part 99

<sup>13</sup> NAC Title 175 Health Care Facilities and Services Licensure

<sup>14</sup> NAC Title 15 NAC 1; and Title 205 Chapter 5

<sup>15</sup> NAC Title 175 Health Care Facilities and Services Licensure

### **Joint Commission on Accreditation of Healthcare Organizations (JCAHO)**

Emergency management standards for hospitals, critical access hospitals, and long term care organizations were implemented in 2008. Specifically, the previous single standard was broadened into eight new standards that became effective January 1, 2008.

- The new standards emphasize an all-hazards approach.
  - Supports preparedness to address a range of emergencies, including addressing patient and staff safety and security.

### **Commission on Accreditation of Healthcare Facilities (CARF)**

Requires facilities to meet a variety of quality standards, including standards for minimizing organizational risk

- Risk management plan.
  - Guidance on what to consider including in a risk management plan, includes emergency response, facility evacuation, and violence situations.
  - Facilities develop a plan appropriate for their unique structure, programs/ services provided, and populations served.
- Insurance to protect against loss from actualized threats.

## Appendix D-2: Liability Issues for Volunteer Disaster Behavioral Health Workers

A reoccurring theme that arises in discussion about mental health professionals volunteering in disaster or emergency situations is the topic of professional liability. The practice of mental health in disaster situations is relatively new and not yet accompanied by widely endorsed, evidence based standards of care. This has led many to ask questions about professional liability in relation to the delivery of professional services in the field as part of disaster response.

Nebraska is fortunate to have statutes in place that protect volunteers in certain emergencies. The Nebraska Emergency Management Act, The Good Samaritan Act, and the Federal Volunteer Protection Act limit liability for the volunteer, though gaps exist that still leave the mental health volunteer vulnerable in certain circumstances. At the most simplistic level it can be said that a mental health disaster volunteer in Nebraska can feel relatively protected if they operate under the auspices of an organization such as the Red Cross or if they are part of an organized response that is activated by an emergency management agency. Liability is murkier and appears to be considerably higher when the volunteer acts alone.

The following summary addresses some of the highlights of the statutes currently in place to protect Nebraska volunteers. It also points out a few of the questions that arise when explicitly applying them to the mental health volunteer.

**Note: This is not legal advice, but is intended only to point out some of the issues to be considered in providing disaster mental health services by volunteers.**

### II. The Nebraska Emergency Management Act (NEMA): 81-829.36-829.75

- A. *Who is an emergency management worker?* Under NEMA, the definition of an “[e]mergency management worker includes any full-time or part-time paid, **volunteer**, or auxiliary employee of this state or other states, territories, or possessions of the federal government or any neighboring country or of any political subdivision thereof, of the District of Columbia, or of any agency or organizations performing emergency management services at any place in this state **subject to the order or control of or pursuant to a request of the state government or any political subdivision thereof** and also **includes instructors and students** in emergency management educational programs **approved** by the Nebraska Emergency Management Agency or otherwise under the provisions of the Emergency Management Act.” 81-829.39 (5).
- B. *What is considered “emergency management”?* Under NEMA, the definition of “[e]mergency management means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to mitigate, prevent, minimize, respond to, and recover from injury and damage resulting from disasters, emergencies, or civil defense emergencies” 81-829.39 (4).

- C. **What is considered an “emergency”?** Under NEMA, an emergency is “any event or the imminent threat thereof causing serious damage, injury, or loss of life or property resulting from any natural or manmade cause which, **in the determination of the Governor or the principal executive officer of a local government**, requires immediate action to accomplish the purposes of the Emergency Management Act and to effectively respond to the event or threat of the event.” 81-829.39 (3). “A state of emergency proclamation **shall be issued** by the Governor if he or she finds that a disaster, emergency, or civil defense emergency has occurred or that the occurrence or threat thereof is imminent.” 81-829.40 (3).
- D. **Are emergency management workers liable?** Under NEMA, “[a]ll functions provided for in the Emergency Management Act and all other activities relating to emergency management are hereby declared to be **governmental functions**. The United States, the state, any political subdivision thereof, any other agencies of the United States, the state, or a political subdivision thereof, and, **except in cases of willful misconduct, gross negligence, or bad faith**, any emergency management worker **complying with or reasonably attempting to comply** with the provisions of the act, any emergency management act of Congress, or any order, rule, or regulation promulgated pursuant to the act or any emergency management act of Congress or acting pursuant to any ordinance relating to black-out or other precautionary measures enacted by any political subdivision of the state **shall not be liable for the death or injury to persons or for damage to property as a result of such activity.**” 81-829.55 (1).
- E. **What license requirements are there?** Under NEMA, “[a]ny requirement for a license to practice any professional, mechanical, or other skill **shall not apply** to any authorized emergency management worker who in the course of performing duties as such practices such professional, mechanical, or other skill during a civil defense emergency or declared state of emergency.” 81-829.55 (2).

## II. Emergency care at scene of emergency (“Good Samaritan Act”): 25-21,186.

- A. **The law:** “No person who **renders emergency care** at the scene of an accident or other emergency **gratuitously**, shall be held liable for any civil damages as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for medical treatment or care for the injured person.”

## III. Volunteer Protection Act of 1997: 42 USC 14501-14505.

- A. **Why did Congress pass this law?** “The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.” 42 USC 14501 (b).

- B. **Who is liable?** “[N]o volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—(1) the volunteer was acting **within the scope** of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission; (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity; (3) the harm was **not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference** to the rights or safety of the individual harmed by the volunteer; and (4) the harm was **not caused** by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to – (A) possess an operator’s license; or (B) maintain insurance.” 42 USC 14503 (a).
- C. **Can the nonprofit organization or governmental entity be liable?** “Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.” 42 USC 14503 (c).
- D. **When would the volunteer be liable?** The volunteer may be liable for “harm **caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference** to the rights or safety of the individual harmed by the volunteer” 42 USC 14503 (a). “The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that – A) constitutes a crime of violence . . . or act of international terrorism . . . for which the defendant has been convicted in any court; (B) constitutes a hate crime . . . ; (C) involves a sexual offense, as defined by applicable state law, for which the defendant has been convicted in any court; (D) involve misconduct for which the defendant has been found to have violated a federal or state civil rights law; or (E) where the defendant was under the influence . . . of intoxicating alcohol or any drug at the time of the misconduct.” 42 USC 14503 (f).

Source: Laws 1961, c. 110, § 1, p. 349; Laws 1971, LB 458, § 1, R.S.1943, (1979), § 25-1152.



## **Appendix D-3: Nebraska “Good Samaritan Law”**

**25-21,186 (1961)**

Emergency care at scene of emergency; persons relieved of civil liability, when:

No person who renders emergency care at the scene of an accident or other emergency gratuitously, shall be held liable for any civil damages as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for medical treatment or care for the injured person.

*Source: Laws 1961, c. 110, § 1, p. 349; Laws 1971, LB 458, § 1, R.S.1943, (1979), § 25-1152.*

## **Appendix D-4: State Employee American Red Cross Leave**

### **81-1391**

Certified disaster service volunteer of American Red Cross; leave authorized.

Any state employee who is a certified disaster service volunteer of the American Red Cross may, with the authorization of his or her supervisor, be granted a leave not to exceed fifteen working days in each year to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross, without loss of pay, vacation time, sick leave, or earned overtime accumulation.

For purposes of this section, state employee means any employee of the state or of any state agency, specifically including all administrative, professional, academic, and other personnel of the University of Nebraska, the state colleges, and the State Department of Education, but excluding any employee or officer of the state whose salary is set by the Constitution of Nebraska or by statute. An employee of any local government or entity, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, shall not be considered a state employee for purposes of this section.

*Source: Laws 1993, LB 697, § 7; Laws 1997, LB 314, § 23; Laws 1999, LB 87, § 97.  
Effective date August 28, 1999.*