# Malpractice, Liability, and Cross-State Protection for Disaster Virtual Care (DVC)

***Disclaimer*:** This material is for **informational purposes only** to support disaster virtual care planning and operations. It **does not constitute legal advice** and should not be relied upon as a substitute for consultation with qualified counsel. Laws, waivers, and declarations **change rapidly**; clinicians and organizations should verify current requirements with their state authorities, payors, and legal advisors. Providers should verify current requirements with their **state licensing boards, activating entities, and legal counsel** before providing care.

## *When Declarations Trigger Liability Protections*

The type of **disaster declaration** in place determines which legal shield applies to healthcare clinicians[1,2]. A **state or local declaration** may activate volunteer or Good Samaritan protections that cover clinicians acting in good faith and within scope. By comparison, a **statewide Emergency Management Act** declaration can go further by making responders temporary state agents under ESF-8, **potentially leveraging** state-funded legal defenses[3]. A **federal Stafford Act** declaration enables FEMA reimbursement and may activate the **Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP)**. Under this system, registered clinicians can be treated as temporary federal employees covered under the **Federal Tort Claims Act (FTCA)[7,8]**.
The **Volunteer Protection Act (42 U.S.C. §14501)** shields volunteers serving nonprofit or governmental entities from civil liability if they are properly licensed, act within assigned duties, and do not engage in misconduct or gross negligence[5].

If HHS declares a **Public Health Emergency** and triggers the **PREP Act**, immunity applies only to covered countermeasures, such as vaccines, PPE, or diagnostics, not to general treatment or Virtual Care[2,14].

**CMS §1135 waivers** apply only to Medicare and Medicaid patients and affect billing and licensure, not malpractice standards[9].
Always confirm which declarations are active with your state EOC or ASPR databases[12].

## *Who Activates You Matters*

Legal protection depends on who **deploys** you[3].
State **ESF-8 deployments**, coordinated through local or state Emergency Operations Centers, usually classify clinicians as temporary state agents eligible for state-funded defense if they act in good faith and within their assigned duties[3,4]. Under the **Emergency Management Assistance Compact** (**EMAC)**, all Region IV states (AL, FL, GA, KY, MS, NC, SC, TN) recognize deployed responders as agents of the requesting state, which assumes tort liability and defense[3]. If deployed through an **NGO** or health system, protection depends on organizational policy; some cover only official missions, while informal or independent volunteering often is not included[6]. Always obtain **written activation orders** and confirm **in advance and in writing who covers malpractice and legal defense** should a claim arise.

## *How Immunity Works and Where It Stops*

Immunity applies only when specific boxes are checked[1,5]:

- You were **formally activated by written orders**, acted in good faith, stayed within scope, and operated under a valid declaration[4].
- Immunity does **not** cover gross negligence, willful misconduct, or criminal acts[5].
  It may lapse if compensation changes volunteer status[6].
- Even under the **PREP Act**, immunity disappears if courts find willful misconduct[2,14].

Maintain activation letters, credentialing records, and patient documentation. **Your paperwork is your proof of protection[6]**.

## *Cross-State Care and Jurisdiction*

In virtual care, the law follows the **patient's location**, not the provider's[10,11]. For example, a Georgia clinician treating a **Florida patient in a disaster event** is subject to Florida tort law unless federally deployed or assigned under EMAC[3,7]. While licensure compacts like **Interstate Medical Licensure Compact (IMLC)** help authorize practice, they **do not extend immunity[11]**. The **Center for Connected Health Policy (CCHP) Telehealth Summit (2025)** notes emerging discussions of a national virtual care registry and "established-patient" exceptions, but until adopted, liability follows the host-state rule[15].

Southern Regional Disaster Response System
HHS Region 4

srdrs@emory.edu

srdrs4.org

Always verify both licensure and liability standards in the patient's state before engaging in **disaster volunteer clinician care**.

## *Malpractice Coverage & Proof: Who Covers You When It Counts*

Malpractice coverage follows the activation pathway[3]:

- **State ESF-8:** Defense and indemnification may be handled by state risk-management or the Attorney General[3,4].
- **EMAC:** Requesting state provides defense through its tort system[3].
- **Federal Teams (NDMS, USPHS):** Covered under the **FTCA**, with the U.S. substituted as defendant[7,8].
- **Hospitals / NGOs:** Coverage depends on organizational policy; informal or self-initiated work often voids protection[6].

Before deployment, verify coverage **in writing** and keep activation orders, credentialing letters, and proof of the active declaration. Remember: **CMS §1135 waivers** modify billing and licensure only; they do not provide malpractice immunity[9].

## *If a Claim Is Filed*

Federal and state entities usually handle defense **only if the clinician was officially deployed under an ESF-8, EMAC, or other authorized activation[3,4,7]**.

Independent volunteers (such as those staffing Peer-to-Peer lines) are generally **not covered** by SRDRS, Emory, or other sponsoring institutions unless pre-authorized.

**Immunity laws do not stop lawsuits.** They determine who pays for your defense and whether you are personally liable[6]. NGO-affiliated clinicians may have limited protection depending on organizational policies, and standard malpractice insurance **does not automatically cover volunteer disaster work**.

Coverage usually applies only when the clinician acts **within the scope of employment** and provides care **on behalf of the sponsoring organization or its patients**.

Because catastrophic events often unfold rapidly, obtaining written defense confirmation may not be feasible. When in doubt, assume that **standard malpractice coverage may not extend to spontaneous volunteer efforts[6,15]**.

Southern Regional Disaster Response System
HHS Region 4

## *Which Law Governs*

When multiple states are involved, the **patient's location** almost always dictates governing law[10,13,15]. Exceptions include: **EMAC** (requesting state tort law)[3] and **FTCA deployments** (federal jurisdiction)[7]. **CMS §1135 waivers** allow temporary cross-state practice for Medicare/Medicaid beneficiaries but do not change malpractice law[9]. Before deployment, determine which jurisdiction applies and document that understanding.

## *Putting It All Together*

Quick-start checklist for safe **Disaster Virtual Care (DVC):**

1. **Confirm Status:** What declaration is active and who is deploying you?
2. **Authorization:** Which disaster licensure or privileging pathway applies?
3. **Coverage:** Who provides malpractice/defense; any exclusions?
4. **Practice & Privacy:** Scope, platform, consent, and documentation.
5. **Payment:** Volunteer vs paid, which payor rules or waivers apply.
6. **After-Action:** Incident reporting, record retention, and closing out once declarations expire.

## *References*


(1) ASPR HHS – PREP Act Q&A (2024). https://aspr.hhs.gov/legal/PREPact/Pages/PREP-Act-Question-and-Answers.aspx
(2) Congressional Research Service – PREP Act Immunity (LSB10443) (2022). https://www.congress.gov/crs-product/LSB10443
(3) EMAC Operations Manual (2023). https://mil.wa.gov/asset/648892cb6fa00/EMAC%20Operations%20Manual%20May%2010%202023.pdf
(4) National Governors Association – Liability Protections & Immunities Memo (2020). https://www.nga.org/wp-content/uploads/2020/05/Memorandum-on-Overview-of-Federal-and-State-Liability-Protections-and-Immunities-_4-6_Final_For-Checklist.pdf
(5) Volunteer Protection Act of 1997 (42 U.S.C. §14501 et seq.) https://uscode.house.gov/view.xhtml?req=(title:42%20section:14501%20edition:prelim)
(6) AMA – Liability Protections for Clinicians During COVID-19 (2020). https://www.ama-assn.org/practice-management/sustainability/liability-protections-health-care-professionals-during-covid-19
(7) Federal Tort Claims Act (FTCA) – U.S. Department of Justice Overview. https://www.justice.gov/civil/ftca
(8) HHS NDMS – National Disaster Medical System Program Overview. https://aspr.hhs.gov/ndms/Pages/default.aspx
(9) CMS – 1135 Waiver FAQ (2024). https://www.cms.gov/about-cms/agency-information/emergency/downloads/medicareffs-emergencyqsas1135waiver.pdf
(10) FSMB – Emergency Licensure Policies for Disasters (2023). https://www.fsmb.org/siteassets/advocacy/pdf/state-emergency-declarations-licensures-requirementscovid-19.pdf
(11) Interstate Medical Licensure Compact (IMLC) Portal. https://www.imlcc.org/
(12) HHS ASPR – Public Health Emergency (PHE) Declarations Portal. https://aspr.hhs.gov/legal/PHE/Pages/default.aspx
(13) CRS Report – Tort Law & Telemedicine (IF11291) (2022). https://crsreports.congress.gov/product/pdf/IF/IF11291
(14) ASPR HHS – PREP Act Countermeasures Program (CICP) (2023). https://www.hrsa.gov/cicp
(15) CCHP / Johns Hopkins Telehealth Summit – Policy Approaches Summary (Oct 2025). https://washingtondc.jhu.edu/wp-content/uploads/2025/10/October-2025-Telehealth-Summit-Policy-Approaches-Summary.pdf



srdrs@emory.edu

srdrs4.org