STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 1129 By: Anderson

AS INTRODUCED

An Act relating to public health and safety; creating the Uniform Emergency Volunteer Health Practitioners Act; providing short title; defining terms; providing for application; authorizing the State Department of Health to regulate volunteer health practitioners in a declared emergency; requiring certain consultation and compliance of specified host entities; setting requirements for a volunteer health practitioner registration system; permitting certain confirmation; requiring certain notification; authorizing host entities to refuse the services of a volunteer health practitioner; permitting certain volunteer health practitioners to practice in this state during a declared emergency; prohibiting certain volunteer health practitioners from certain protections; clarifying credentialing or privileging standards; requiring adherence to certain scopes of practice; prohibiting the providing of services outside a practitioner's scope of practice; authorizing the Department or a host entity to restrict certain services; providing certain protection; permitting certain licensing boards to impose administrative sanctions; requiring certain reporting; requiring certain consideration; providing for certain rights, privileges or immunities; permitting the Department to incorporate certain volunteer health practitioners; authorizing the State Board of Health to promulgate rules; requiring consideration for uniformity; amending 63 O.S. 2001, Sections 683.9 and 683.13, as amended by Sections 9 and 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Sections 683.9 and 683.13), which relate to the Emergency Management Act of 2003, modifying definition; providing certain exclusion; repealing Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), which

relates to emergency powers regarding licensing and appointment of health personnel; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Emergency Volunteer Health Practitioners Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Emergency Volunteer Health Practitioners Act:

1. "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 the State Department of Health, and

b. regularly plans and conducts its activities in coordination with an agency of the federal government or the State Department of Health;

2. "Emergency" means an event or condition that is an emergency pursuant to the Oklahoma Emergency Management Act of 2003 or the Catastrophic Health Emergency Powers Act;

3. "Emergency declaration" means a declaration of emergency issued by a person authorized to do so under the laws of this state pursuant to the Oklahoma Emergency Management Act of 2003 or the Catastrophic Health Emergency Powers Act;

4. "Emergency Management Assistance Compact" means the interstate compact approved by Congress by Public Law No. 104-321,110 Stat. 3877;

5. "Entity" means a person other than an individual;

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

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

8. "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:

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

(2) 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;

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

10. "License" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization and 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;

11. "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;

12. "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;

13. "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;

14. "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, but not limited to:

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; and

15. "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services and 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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Uniform Emergency Volunteer Health Practitioners Act applies to volunteer health practitioners registered with a registration system that complies with Section 5 of this act and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. While an emergency declaration is in effect, the State Department of Health may limit, restrict, or otherwise regulate:

1. The duration of practice by volunteer health practitioners;

2. The geographical areas in which volunteer health practitioners may practice;

3. The types of volunteer health practitioners who may practice; and

4. Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

B. An order issued pursuant to subsection A of this section may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the Administrative Procedures Act.

C. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

1. Consult and coordinate its activities with the State Department of Health to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

2. Comply with any laws other than this act relating to the management of emergency health or veterinary services, including the Oklahoma Emergency Management Act of 2003 and the Catastrophic Health Emergency Powers Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. To qualify as a volunteer health practitioner registration system, a system must:

1. Accept applications for the registration of volunteer health practitioners before or during an emergency;

2. Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

3. 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 act; and

4. Meet one of the following conditions:

a. be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the Health Resources Services Administration under Section 319I of the Public Health Services Act, 42 U.S.C. Section 247d-7b,

b. 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,

c. be operated by a:

(1) disaster relief organization,

(2) licensing board,

(3) national or regional association of licensing boards or health practitioners,

(4) health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital,

(5) governmental entity, or

d. be designated by the State Department of Health as a registration system for purposes of this act.

B. While an emergency declaration is in effect, the State Department of Health, a person authorized to act on behalf of the Department, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection A of this section. Confirmation is 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.

C. Upon request of a person in this state authorized under subsection B 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.

D. 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.19 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with Section 5 of this act 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 act as if the practitioner were licensed in this state.

B. A volunteer health practitioner qualified under subsection A of this section is not entitled to the protections of this act 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.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section:

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; and

2. “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.

B. This act does 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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.21 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Subject to subsections B and C 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.

B. Except as otherwise provided in subsection C of this section, this act does 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.

C. The State Department of Health may modify or restrict the health or veterinary services that volunteer health practitioners

may provide pursuant to this act. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the Administrative Procedures Act.

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

E. 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:

1. 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

2. 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.

F. In addition to the authority granted by law of this state other than this act to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

1. 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;

2. 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

3. 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.

G. In determining whether to impose administrative sanctions under subsection F 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.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.22 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This act does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this

act. Except as otherwise provided in subsection B of this section, this act does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

B. The State Department of Health, 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.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.23 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Board of Health may promulgate rules to implement this act. In doing so, the State Department of Health 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 act and make the emergency response systems in the various states reasonably compatible.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.24 of Title 63, unless there is created a duplication in numbering, reads as follows:

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 12. AMENDATORY 63 O.S. 2001, Section 683.9, as amended by Section 9, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Section 683.9), is amended to read as follows:

Section 683.9 The provisions of this section shall be operative only during the existence of a natural or man-made emergency. The existence of such emergency may be proclaimed by the Governor or by concurrent resolution of the Legislature if the Governor in such proclamation, or the Legislature in such resolution, finds that an emergency or disaster has occurred or is anticipated in the immediate future. Any such emergency, whether proclaimed by the Governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or by passage by the Legislature of a concurrent resolution terminating such emergency. During such period as such state of emergency exists or continues, the Governor shall have and may exercise the following additional emergency powers:

1. To activate the Emergency Operations Plan, and to assume regulatory control over all essential resources of this state, directly or through the boards, agencies, offices and officers established by ~~said~~ the Emergency Operations Plan, to determine priorities of such resources and allocate such resources as the

Governor may deem necessary in cooperation with the political subdivisions of this state, the federal government, or other states. "Resources" shall mean all economic resources within this state including but not limited to food, manpower, health ~~and health manpower~~, water, transportation, economic stabilization, electric power, petroleum, gas, and solid fuel, industrial production, construction and housing.

2. To enforce all laws, rules and regulations relating to emergency management and to assume direct operational control of any or all emergency management forces and helpers in this state.

3. To provide for the evacuation of all or part of the population from any stricken or threatened area or areas within this state and to take such steps as are necessary for the receipt and care of such evacuees.

4. Subject to the provisions of the State Constitution, to remove from office any public officer having administrative responsibilities under this act for willful failure to obey any order, rule or regulation adopted pursuant to this act. Such removal shall be upon charges after service upon such person of a copy of such charges and after giving such person an opportunity to be heard in the defense of such person. Pending the preparation and disposition of charges, the Governor may suspend such person for a period not exceeding thirty (30) days. A vacancy resulting from

removal or suspension pursuant to this section shall be filled by the Governor until it is filled as otherwise provided by law.

5. To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population and to carry out the provisions of the Emergency Operations Plan in a national or state emergency.

SECTION 13. AMENDATORY 63 O.S. 2001, Section 683.13, as amended by Section 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Section 683.13), is amended to read as follows:

Section 683.13 A. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. The provisions of this section shall not affect the right of any person to receive benefits to which the person would otherwise be entitled under this act, or under the workers' compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress. Any municipal fireman or policeman engaged in any emergency management activities, while complying with or attempting to comply with this act or any rule or regulation pursuant thereto, shall be considered as serving in his or her regular line of duty and shall be entitled to all benefits of any applicable pension fund.

B. Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker from any state rendering mutual aid and who holds a comparable license in that state, who shall practice such professional, mechanical, or other skill during an emergency declared under the provisions of this act, when such professional, mechanical or other skill is exercised in accordance with the provisions of this act.

C. As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer, or auxiliary employee of this state, or other states, territories, possession or the District of Columbia, of the federal government, or any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing emergency management services under state supervision, and who has been properly trained in the performance of emergency management functions, 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. <u>The term emergency management worker shall not include any volunteer health practitioner subject to the provisions of the Uniform Emergency Volunteer Health Practitioners Act.</u>

D. Any emergency management worker, as defined in this section, performing emergency management services at any place in this state pursuant to agreements, compacts, or arrangements for mutual aid and

assistance, to which the state or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges the person would ordinarily possess if performing the same duties in the state, province, or political subdivision thereof in which normally employed or rendering services.

SECTION 14. REPEALER Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), is hereby repealed.

SECTION 15. This act shall become effective November 1, 2009.

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