



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON DISASTER PREPAREDNESS
PLANNING

FROM: Richard Sweet, Senior Staff Attorney

RE: State Statutes Providing Liability Protection During Emergencies

DATE: November 6, 2006

This memo summarizes the following statutes that provide liability protection to persons rendering assistance during specified types of emergencies:

- Good Samaritan law [s. 895.48 (1), Stats.]
- Assistance during disasters or declared emergencies [s. 166.03 (10), Stats.]
- Services during declared emergencies on behalf of a health care facility [s. 250.042 (4), Stats.]
- Emergency Management Assistance Compact [s. 166.30 (6), Stats.]
- Use of defibrillators [s. 895.48 (4), Stats.]
- Hazardous substances [s. 895.4802, Stats.]
- Regional and local hazardous substance emergency response teams [s. 895.483, Stats.]

Good Samaritan Law [s. 895.48 (1), Stats.]

The state's Good Samaritan law provides that any person who renders emergency care at the scene of an emergency or accident in good faith is immune from civil liability for his or her acts or omissions in rendering the emergency care.

The immunity under this law does not apply to employees trained in health care or health care professionals who render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of an emergency or accident, enroute to a hospital or other institution, or at a physician's office.

Assistance During Disasters or Declared Emergencies [s. 166.03 (10), Stats.]

The statutes provide that no person who provides equipment, materials, facilities, labor, or services is liable for the death of or injury to any person or damage to any property caused by his or her actions if the person did so under both of the following conditions:

- The actions were taken under the direction of: (1) the Governor; (2) the Adjutant General; (3) the governing body, chief, or acting chief executive officer, or head of emergency management services of any county, town, municipality, or federally recognized American Indian tribe or band in this state; (4) the Department of Health and Family Services (DHFS) if that department is designated to be the lead state agency by the Governor in declaring a public health emergency; or (5) a local health department acting as the agent of DHFS.
- The actions were taken in response to enemy action, a natural or man-made disaster, or a federally declared state of emergency or during a state of emergency declared by the Governor.

The immunity under this statute does not apply if the person's act or omission involved reckless, wanton, or intentional misconduct.

Services During Declared Emergencies on Behalf of a Health Care Facility [s. 250.042 (4), Stats.]

The statutes provide that a behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who, during a declared emergency, provides behavioral health services, health care services, pupil services, or substance abuse prevention services for which the person has been licensed or certified is, for the provision of those services, a state agent of DHFS for purposes of several specified statutes. The services must have been provided on behalf of a health care facility on a voluntary, unpaid basis, except that the provider may accept reimbursement for travel, lodging, and meals. The emergency must be declared by the Governor under s. 166.03 (1) (b) 1., Stats., or by a city, village, or town under s. 166.23, Stats.

For purposes of this statute, the term "health care facility" is defined by reference to another statute that includes various facilities approved or licensed by DHFS, and specifically mentions hospitals, nursing homes, and community-based residential facilities. In addition, the terms "behavioral health provider," "health care provider," "pupil services provider," and "substance abuse prevention

provider” are defined as persons who have held specified types of state credentials (e.g., psychologists, physicians, nurses, school counselors, and substance abuse counselors) at any time within 10 years before the emergency is declared. However, this statute does not apply to persons whose credentials have been limited, suspended, revoked, or denied renewal.

While the statute does not provide immunity from liability to those persons, it does, as noted above, provide that they are considered to be state agents of DHFS for the purpose of specified statutes. Those statutes require notice to the Department of Justice (DOJ) within a specified time period, allow DOJ to represent the person in civil or administrative actions, limit damages to \$250,000 (with no punitive damages allowed), and require that the damages be paid by the state.

Emergency Management Assistant Compact [s. 166.30 (6), Stats.]

The statutes ratify and set forth the Emergency Management Assistance Compact (EMAC). That compact provides for mutual assistance among party states in managing emergencies or disasters declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

Under EMAC, officers or employees of a party state rendering aid in another party state shall be considered agents of the requesting state for tort liability and immunity purposes. EMAC further provides that no party state or its officers or employees rendering aid in another party state are liable on account of any act or omission performed in good faith while so engaged or on account of the maintenance or use of any equipment or supplies in connection with the rendering of aid. For purposes of this provision, “good faith” does not include willful, wanton, or reckless misconduct.

Use of Defibrillators [s. 895.48 (4), Stats.]

The statutes provide immunity from civil liability to specified persons for the acts or omissions of a person in rendering good faith emergency care by use of an automated external defibrillator (AED) to a person who appears to be in cardiac arrest. This immunity applies to any of the following (but not to emergency medical technicians or first responders): (1) the person who renders the care; (2) the owner of the AED; (3) the person who provides the AED for use if that person ensures that the AED is maintained and tested in accordance with manufacturer guidelines; and (4) any person who provides training in the use of an AED to the person who renders care.

The immunity under this statute does not apply to a person whose act or omission constitutes gross negligence. In addition, the immunity does not apply to a health care professional who renders emergency care for compensation and within the scope of his or her usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of an emergency or accident, enroute to a hospital or other institution, or at a physician’s office.

Hazardous Substances [s. 895.4802, Stats.]

The statutes provide immunity from civil liability to a person for his or her good faith acts or omissions related to assistance or advice that the person provides relating to an emergency or potential emergency regarding either of the following: (1) mitigating or attempting to mitigate the effects of an

actual or threatened discharge of a hazardous substance; or (2) preventing or cleaning up or attempting to prevent or clean up an actual or threatened discharge of a hazardous substance.

The immunity under this statute does not apply to any of the following: (1) a person whose act or omission causes in whole or in part the actual or threatened discharge and who would otherwise be liable for the act or omission; (2) a person who would be liable for the discharge under enumerated pollution and waste statutes or rules; (3) a person whose act or omission constitutes gross negligence or involves reckless, wanton, or intentional misconduct; or (4) a person who receives or expects to receive compensation, other than reimbursement for out-of-pocket expenses, for rendering the advice and assistance.

In addition, that statute provides that any hazardous substance predictor or person who provides the technology to enable hazardous substance predictions to be made is immune from civil liability for good faith acts or omissions in making the prediction or providing the technology. Exceptions that are similar to the first three exceptions cited in the previous paragraph also apply to hazardous substance predictors and persons providing the technology.

Regional and Local Emergency Response Teams [s. 895.483, Stats.]

The statutes provide that a regional emergency response team, a member of such a team, and a local agency that contracts with the Division of Emergency Management (WEM) in the Department of Military Affairs for the provision of a regional emergency response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under the contract with WEM.

The statutes further provide that a local emergency response team, a member of such a team, and the county, city, village, or town that contracts to provide the team to the county are immune from civil liability for acts or omissions related to carrying out their responsibilities under the statutes.

In addition, the statutes provide that a local emergency planning committee that receives a grant from WEM is immune from civil liability for acts or omissions related to carrying out its responsibilities under the statutes.

RNS:wu