

Legal Issues Fact Sheet for Health Care Providers and Their Attorneys

<p>What is the Public Readiness and Emergency Preparedness?</p>	<p>The PREP Act authorizes the Secretary of the U.S. Department of Health and Human Services (HHS) to issue a “PREP Act Declaration” that provides immunity from tort liability (except for willful misconduct) for claims of loss caused, arising out of, relating to, or resulting from administration or use of disaster countermeasures.</p> <p>A list of standing and past PREP Act declarations can be found at http://www.phe.gov/preparedness/legal/prepact/pages/default.aspx.</p>
<p>What is the Stafford Act?</p>	<p>On request by any state governor, The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) authorizes the President of the United States to declare a state of emergency. Declarations under the Stafford Act activate response by federal emergency management agencies.</p>
<p>What is the National Emergencies Act (NEA)?</p>	<p>The NEA authorizes the President to declare a national emergency. A declaration under the NEA does not give any specific emergency authority. However, it does allow other federal statutory emergency authorities to be activated.</p>
<p>What is the Public Health Service Act (PHSA)?¹</p>	<p>The PHSA gives legal authority to HHS in responding to emergencies. Specifically, PHSA Section 319 authorizes the HHS secretary to determine that a public health emergency exists. Similar to the NEA, this determination triggers other emergency powers that permit federal governments to address the public health emergency.</p>
<p>What is the Social Security Act (SSA) Section 1135 waiver?</p>	<p>When authorized, Section 1135 waivers ensure that sufficient health care services are available to meet the needs of individuals enrolled in SSA programs when and where a public health emergency occurs. The HHS secretary is authorized to waive or modify a number of reimbursement requirements including, but not limited to, licensure, sanctions under Emergency Medical Treatment and Active Labor Act (EMTALA), and sanctions regarding Health Insurance Portability and Accountability Act (HIPAA) privacy regulations.</p>
<p>How do they all work together?</p>	<p>The PREP Act <u>does not</u> require a public health emergency determination for the secretary to make a PREP Act declaration. The Stafford Act, NEA, and PHSA <u>all</u> require a declaration or determination to take effect. Section 1135 waivers are only authorized after a Stafford Act or NEA declaration <u>and</u> a PHSA determination have been made.</p>

¹ <http://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Public-Health-Service-Act%2c-Section-319-Fact-Sheet/>

