



# Understanding Liability Risks and Protections for Pediatric Providers During Disasters

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Although most health care providers will go through their careers without experiencing a major disaster in their local communities, if one does occur, it can be life and career altering. The American Academy of Pediatrics has been at the forefront of providing education and advocacy on the critical importance of disaster preparedness. From experiences over the past decade, new evidence and analysis have broadened our understanding that the concept of preparedness is also applicable to addressing the unique professional liability risks that can occur when caring for patients and families during a disaster. In our recommendations in this policy statement, we target pediatric health care providers, advocates, and policy makers and address how individuals, institutions, and government can work together to strengthen the system of liability protections during disasters so that appropriate and timely care can be delivered with minimal fear of legal reprisal or confusion.

## INTRODUCTION

The purpose of this policy statement is to educate and raise awareness for providers and policy makers about the current state of liability risk and protection for health care providers who are caring for children during disasters. The goal is to equip and encourage pediatric providers to respond to disasters without fear of unanticipated legal issues. It also provides advocacy recommendations to strengthen liability protections. Detailed information forming the basis of the recommendations in this policy statement is found in the accompanying technical report.<sup>1</sup>

## RECOMMENDATIONS

1. Pediatric leaders should continue to emphasize and promote the American Academy of Pediatrics' expanding drive to educate pediatric

## abstract

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- providers and patients' families on the importance of preparedness for disasters.
2. Pediatricians should continue to promote leadership at the federal, state, and local levels to:
    - a. ensure that children's needs in disasters are adequately addressed; and
    - b. ascertain status of the most current disaster liability-related laws applicable in each state; and advocate accordingly.
  3. The US Department of Health and Human Services should conduct a review, potentially through its Federal Advisory Committee processes, of current state and federal liability laws and issue recommendations for Congress to enact laws that address:
    - a. disaster-response liability protections for nonvolunteer clinicians affected by conditions and decisions outside of their control;
    - b. timing of declarations and how affected clinicians are covered;
    - c. inconsistency in state malpractice liability protections for volunteer physicians able and willing to care for patients and nonvolunteer physicians performing in their usual capacity;
    - d. a renewed assessment of vulnerable patients' rights, protections, and access to health care during disasters as related to provider liability protections; and
    - e. an updated assessment of liability coverage needs during times of "crisis standards of care."
  4. Pediatric providers should strive to understand their own liability risks, protections, and limitations during disasters and take steps to mitigate them by developing a disaster readiness plan, including:
    - a. education of self and staff on providing medical care during disasters and how to best document clinical decisions made in an altered health care environment;
    - b. proactive identification of obstacles to providing care during disasters, using an all-hazards approach, with the goal of maintaining continuity of operations throughout;
    - c. education of patients and their families before and during disasters;
    - d. use of the American Academy of Pediatrics Department of State Government Affairs as a resource for current information on disaster liability laws in their respective states;
    - e. understanding of potential limits to their professional malpractice insurance coverage during disasters and, if possible, taking steps to add additional coverage for identified gaps;
    - f. advocating for their hospitals to have active disaster plans that address the unique needs of children and conduct disaster drills that test pediatric capabilities; and
    - g. for any provider whose personal circumstances would allow, consideration of registering and training with a volunteer organization.
  5. Health care institutions and employers should provide appropriate disaster liability protections for employed health care workers through:
    - a. offering disaster preparedness programs;
    - b. providing adequate professional malpractice insurance coverage that explicitly includes conditions that may occur during disasters while performing one's job; and
    - c. developing policies to allow and support their employees to volunteer.
  6. Medical liability insurers should reduce gaps in coverage for insured individuals providing necessary health care services in good faith in response to disasters.

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The guidance in this statement does not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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## REFERENCE

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