



## Prescribing Authority During Declared Emergencies for Mental and Behavioral Health Care Providers

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**Introduction.** While national or regional emergencies or disasters are well-known for causing an array of harms to physical health, they can also have a significant impact on individuals' mental and behavioral health. Existing mental health conditions, such as schizophrenia and depression, may be exacerbated by an emergency. New conditions, such as post-traumatic stress disorder, may emerge in some persons as a result of the emergency. Large-scale emergencies may affect the mental and behavioral health of first responders, public health officials, health care workers, and others involved in response efforts. The mental health of certain vulnerable populations, including children, the elderly, individuals in group facilities, and persons from socially or economically disadvantaged groups, may also be impacted. Depending on the particular mental and behavioral health issues that arise, individuals may need to access mental health services during and/or after a declared emergency.

In September 2008, the Centers for Disease Control and Prevention (CDC) established a Preparedness and Emergency Response Research Center (PERRC) at the Johns Hopkins Bloomberg School of Public Health. One of the Center's goals is to identify, research, and analyze the legal and ethical issues that arise during emergencies relative to mental and behavioral health. As part of this effort, scholars and researchers at the Johns Hopkins PERRC, in collaboration with the ASU Sandra Day O'Connor College of Law, have created a series of translational tools on relevant legal and ethical issues.

**Purpose.** This tool is intended as a resource for health care providers and administrators, public health officials, emergency planners, clergy, and the public and private sector partners who seek to identify the key legal issues that may arise during and after emergencies relative to prescribing authority for mental health care practitioners. This tool provides general information and is not intended to offer jurisdiction-specific advice. The content focuses primarily on relevant federal laws although select state or local laws may also be discussed.

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**Disclaimer.** While this document was prepared with support from CDC (5P01TP000288-02), its contents do not represent the official legal position of CDC or other project partners. *This document does not provide specific legal advice.* Practitioners should consult with their legal counsel for a more detailed understanding of federal laws and to understand the implications of relevant state laws.

## Prescribing Authority During Declared Emergencies for Mental and Behavioral Health Care Providers

**Background:** Most mental and behavioral health services are provided through therapeutic interventions, including the prescription of psychotropic and other drugs. For individuals with pre-existing or emerging mental health conditions that require prescription medications, access to these medications or a legally-authorized prescriber is critical during and immediately after declared emergencies.

**Prescribing Authority in Non-Emergency Contexts:** The federal and state governments regulate the prescription of psychotropic and other medications through the following means:

- *Federal Drug Schedules:* The federal government has established [five Schedules](#) that divide drugs into categories based on their addictive qualities and potential for abuse. Schedule I drugs do not have a recognized therapeutic value and may not be prescribed. Drugs falling into Schedules II through V may be dispensed only with a prescription. This includes medications commonly prescribed for mental health conditions, such as benzodiazepines for anxiety and amphetamines for ADHD.
- *Content of Prescriptions:* The federal government requires prescriptions to contain certain information (e.g., drug name and dosage; date of issue). States may add their own non-conflicting requirements (e.g., listing a patient's name and address).
- *Professional Licensure:* The ability to issue a prescription is tied to professional licensure, which is regulated by state governments. For certain mental health care practitioners (e.g., physicians, physician assistants (PAs), and some advanced practice nurses (APNs)) licensure includes prescribing authority. States vary in the degree to which they allow PAs and APNs to issue prescriptions, often requiring them to engage in collaborative practice or other arrangements with a licensed physician.

**Prescribing Authority during Declared Emergencies:** During a declared emergency, federal and state laws governing prescribing authority largely remain in place unless they are explicitly waived by the government, often pursuant to emergency declarations. Several legal provisions can help affected states meet patient surge capacity concerning issues related to prescribing authority:

- *Licensure Portability:* Multiple laws facilitate the interstate deployment of licensed health care providers during declared emergencies. These provisions allow legally-authorized, out-of-state providers to prescribe medications in the affected state for the duration of the declared emergency. For example, every state has executed the [Emergency Management Assistance Compact \(EMAC\)](#), which allows out-of-state licensed health care providers in the public sector (i.e., state or local agents) to provide care and write prescriptions in an affected state during a declared emergency. Many states have laws that allow out-of-state, licensed health care providers to practice and, if appropriate, prescribe medications during a declared emergency. In addition, federal health care professionals with a valid license and prescribing authority in any state are authorized to prescribe in any federal facility before, during, and after emergencies.
- *Protections from Civil Liability:* Emergency laws such as EMAC limit civil liability for licensed health care providers who practice and prescribe during declared emergencies.<sup>1</sup>
- *Challenges:* Emergency laws may be vague and vary by jurisdiction in their treatment of supervisory arrangements for PAs and APNs during declared emergencies. In addition, although the Institute of Medicine is working to provide national guidance by better defining a crisis standard of care for emergencies, at present health care providers must make case-by-case assessments to determine if they have enough information (e.g., patient history; diagnosis confirmation) to issue prescriptions.

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<sup>1</sup> For examples of other laws that contain civil liability protections, see Hodge JG, Rutkow L, Corcoran AJ. A hidden epidemic: assessing the legal environment underlying mental and behavioral health conditions in emergencies. *St. Louis U J Health L. & Pol'y* 2010;4:33-92.