

**May 20, 2015**  
**EMS Legal Issues Webinar**  
**Presentation Transcript**

**Facilitator – Jason Baker**

Hello and welcome to the Emergency Medical Services, that is EMS, and Patient Surge Essential Legal Issues Webinar presented by Professor James Hodge from the Sandra Day O'Connor College of Law at Arizona State University sponsored by Oak Ridge Associated Universities, known as ORAU.

Some administrative notes and reminders before we begin:

Please be advised that this webinar is being recorded. Also, a question and answer session will follow today's presentation. Please be so kind and type your questions into the questions box located on the GoToWebinar control panel on the right of your screen. Again, to make sure your questions are clear, please type them into the questions box. We will address as many questions as possible at the end of the presentation. If we run out of time and cannot address all questions during the webinar, a summary of questions and answers will be posted, online, in the near future.

Before I introduce James, let me please provide a brief project background and overview.

For almost a dozen years, the Oak Ridge Associated Universities' Health Preparedness Group has partnered with the Centers for Disease Control and Prevention's, that is CDC's, Healthcare Preparedness Activity, known as HPA, to conduct a series of stakeholder meetings and community workshops. The primary goal of this work has been to develop a multidisciplinary model of healthcare delivery for a public health emergency. In other words, how community healthcare components will collaborate to deliver patient care under conditions of mass medical surge. As part of this effort, in August of 2013, EMS representatives from various healthcare and nonhealthcare agencies around the United States assembled at CDC in Atlanta to attend the *EMS Stakeholder Meeting for Medical Surge*.

The goal of the 2013 EMS Stakeholder Meeting, which was sponsored by CDC-HPA and in partnership with the Department of Transportation's National Highway Traffic Safety Administration, was to provide a forum for exploring the concept of expanded EMS roles during a medical surge event. This included developing potential processes for coordinating expanded EMS roles with other stakeholders and identifying activities and strategies to implement the expanded roles. Additionally, stakeholders across the prehospital continuum of emergency care discussed concepts that are critical to altering standards of care under medical surge.

Since then, the collaborative efforts of the EMS Stakeholder Meeting have continued with this EMS Legal Project. The Project includes advanced work on legal implications for each of four major topical areas, namely:

- 1) Tiered Dispatch
- 2) Modified Transport and Treatment Strategies
- 3) Coordinating Transport to Alternate Destinations, and
- 4) Support for Rapid Implementation of Patient Interventions.

With his research team, James' assessment of the legal issues that impact EMS providers during medical surge has led to their report entitled *EMS and Medical Surge: Essential Legal Issues*. This report, set for release this fall 2015, is intended to assist communities across the country in their efforts to navigate relevant laws and policies for mass medical surge during public health emergencies.

Our presenter today, Professor James Hodge, is Professor of Public Health Law and Ethics and Director of the Public Health Law and Policy Program at the Sandra Day O'Connor College of Law, Arizona State University. His work in public health emergency legal preparedness is long-standing, extensive, and diverse. He has worked for many years with federal, state, and local officials on a variety of legal preparedness projects. James has authored numerous federal and state reports on critical legal preparedness issues, published over 50 related articles, and presented to thousands of practitioners, scholars, and students on these topics. In addition, he was the only legally trained expert in attendance for the August 2013 EMS Stakeholder Meeting where he presented on the unique legal issues underlying the expansion of EMS roles and conventional scope of practice. We are proud to welcome Professor James Hodge to present his research and analysis findings today. James.

### **Presenter – James Hodge**

Jason, thank you so much for that great background on behalf of Oak Ridge Associated Universities and thanks to everybody on the call and webinar today. Here's what we're going to accomplish during the brief time that I'll be presenting, trying to work through some of the key legal issues. Let me tell you how we'll go about accomplishing that. I'm gonna talk you through just a few brief administrative points. We'll set the stage for all of our discussion that we'll take on, the core law and policy issues that we've digested and worked through on behalf of, and in conjunction with, so many great EMS providers across the country. To this end, after a brief assessment of these administrative slides, we'll jump right into several major areas. I'll be very succinct on some of these fronts. The report that Jason described goes into considerable detail on some of these key issues. If you have questions, and I do hope you will, please be prepared to "chat" them into your question boxes that Jason noted during his brief introduction. If you like

you might see at the bottom of your right corner of the screen the slide number. Keep track of that as some slides won't be up on the screen very long. Maybe you want to go back to one of the slides, for example slide 10 or slide 15, tell us about it in the chat box later and I'll take you right back there as part of our overall session. So just a brief disclaimer as we start. Everything we're talking about here today and everything you'll see in the forthcoming report doesn't constitute legal advice in any jurisdiction. We're giving you some really good information. In fact, I think it's gonna be fantastic information. Even if you're not legal counsel representing EMS providers, share it with those legal counsels, I think they'll find it helpful, but consult them if you have specific legal guidance that you're looking for on any of these key topics.

I'm really delighted on a project like this to be joined by some great colleagues including Kim Winder working with me closely here at ASU in Tempe, Arizona, as well as our great colleague, Lela Barraza Assistant Professor at the Mel and Enid Zuckerman College of Public Health at the University of Arizona in Tucson, and great colleagues like Dan Orenstein and Greg Measer, two of our fantastic research students, Asha Agrawal and Matt Saria joining us here today also made great contributions to our research and this presentation.

Let me tell you briefly about the project targets. Just so you know going in, as an EMS provider or other colleague working with folks within that arena, what we were after here. So to be sure, the main objective was to assess and research legal and policy areas that impact EMS providers. And here throughout the course of my presentation, I'll be talking about providers, generally speaking, to refer both to EMS personnel as well as the EMS entities, the organizational entity, that may provide those specific services. We're talking about what they may do and the issues that may arise during periods of medical surge. These may arise in declared public health emergencies, you'll find out momentarily some of our assessment there, or it may be just a period of medical surge that exceeds anything typical in the normal day or the normal routine. We're gonna analyze and explain core legal issues, we're gonna do something more than just identify the issues in this report, and what I hope to do here today will give you potential or actual solutions. Now to be sure, these solutions may not work in every jurisdiction, but they're things we found as we did some of our great research across a lot of places. There are some limits to what we can do and obviously one of those is the focus. Our focus is on declared emergencies and the types of medical surge issues that arise there through which EMS providers are so essential. But we're not talking about the sort of routine legal issues that may arise in the day-to-day operations of how EMS goes about this business so responsibly. We're talking about giving you legal research and analyses focused on statutes and regulations at the federal level and in 20 selected states that we took a very close look at. The timing and the scope of what we could do really centered on these 20 states because of the sheer fact, as you'll see here in a moment, how many different perspectives we could glean from that. And while these states, the 20 I'll mention, as well as federal laws are the focus, mainly of what you'll see in the report and in some of my discussion today, we do actually bring in other states' laws and some of our tables and appendices actually do that quite nicely. These are the 20 states that we selected in combination

with our colleagues at Oak Ridge as well as with other colleagues, part of our expert panel. To be sure these states were selected for their geographic, political, and other types of variations, but also because, as you'll see in several of these on the screen, some of these states have outstanding experience with major emergencies involving surges of patients and how EMS providers have worked through those scenarios. So we have learned a lot looking at the laws in these specific jurisdictions, some of which may apply to jurisdictions even those that are not represented here today. Alright, enough of the administration.

Let's talk about the major areas that we're going to get to the heart of right now. So for what I'll do here is just introduce these topics now. For each one of them I'm going to break down the major objectives what we'll try to accomplish being extremely brief along the way in regards to my comments and, again, looking forward to your questions a little bit later. So the major topics that we break this area down pursuant to our legal assessment. What and how do we think through the emergency legal preparedness issues? You'll see that in just a moment. What are the types of concerns from a legal policy perspective that arise as you attempt to meet surge capacity through EMS providers, what about liability and what sort of protections may be there. We'll lay that out for you momentarily. Allocating resources is absolutely essential in these specific types of events but what are the legal tools that we have available to us through EMS and other partners to make that happen, and then what about reimbursements specifically for EMS services post emergency or even during the emergency. We're gonna show you something there in the schematic that I think you'll really find helpful, a little chart to walk you through what the options may be, something which is of critical concern to a lot of EMS providers nationally. So, emergency legal preparedness, what do I want to try to cover here briefly? Let's just talk about some of the various steps that are essential to prepare for public health emergencies, specifically planning and the jurisdictional coordination. Now we've got a lot of legal tools at our disposal to make this happen at a high level. I'll introduce you to some of those tools like agreements, memoranda, various protocols, but then let's get to another key issue here, as brief as we will be, looking at how things change during the emergency itself. A declared state of emergency changes the legal environment that could facilitate a lot of specific response efforts to EMS providers that may feature things like waivers or flexible powers or even specific liability protections. I'll give you a demonstration of that throughout the course of our time together.

One of the things that we all recognize that we've all been doing, I think nationally, for years now, is planning for these types of events. And it's essential, obviously, advance planning is something that at every level of government and within so many different private provider, hospital, clinical, and EMS settings that recognize this is essential. It's really that critical to effective emergency responses. Now we know the signs behind that, but the truth is, legally, it's not optional either. In many cases there may be specific laws you're seeing at the federal level, at the jurisdictional level, at states which actually require this type of planning. It requires pursuant to grants that may be received, it requires it pursuant to specific emergency legal requirements that are set into place, and sometimes the reason that planning is so essential is because there

could be liability that flows from a failure to plan. Now that's a critical observation, but it's one we see played out. The report will detail it out in a more considerable effort but, you see this played out when you have a specific type of provider, that has basically failed to plan, potentially getting tagged with liability. You are seeing a lawsuit like that arise out of what you saw in Dallas related to the Ebola situation there. You see lawsuits like that post Hurricane Katrina and you're seeing very specific issues raised, civil lawsuits, in regards to failure to plan just for certain populations like persons with disabilities, specific suits arising in New York City, LA County, all honed in on the essential need to plan effectively. Now the first goal of planning, as we all have seen quite consistently, whether that's through directly EMS providers or in conjunction with hospitals or through crisis standard of care planning that's happening in a lot of states is the essential need for inter jurisdictional coordination. Now FICEMS, the Federal Interagency Committee on EMS, has made this quite clear and we have heard this consistently. So many partners at the federal level are heavily involved in this. As you know, CDC and the Food and Drug Administration (FDA) and our partners at the Department of Health and Human (HHS), Department of Transportation (DOT), Department of Transportation's National Highway Traffic Safety Administration (NHTSA), Department of Defense (DoD), all those represented on the screen (reference slide 12) here all have a critical role to play during coordination of various events specifically involving declared emergencies. But to be sure, this is happening at the state level, as we know, it's happening at the local level. It's all that essential to effective emergency responses and the planning can actually help towards that end, but some complications arise.

What you need to respond to these complications are a host of coordination tools. Our report does a really nice job of walking you through lots of options, various compacts, various agreements done in advance, various guidelines set forth at the state level, local level on down and various protocols that are used really well in a lot of different jurisdictions we've studied, all of which have different legal meanings and all of which can be extremely effective in advance for inter jurisdictional coordination especially across states or county borders. One prominent example there slide 14 you see here at the bottom, a prominent example the compacts were all aware of probably and use. I dare say a jurisdiction that's faced one of these events if of course EMAC, the Emergency Management Assistance Compact. EMS personnel are part of these EMAC sort of maneuvers as well, and a prominent part of it in many different environments. They're activated by Governor's Emergency Declaration. They allow for the deployment of resources that are arranged immediately, often within 24 hours. Personnel can be deployed as you see at the bottom of the screen pursuant to the requested agency and the requesting state can actually repay the assisting state which is a fantastic facet of the EMAC executed and entered into by all states as well as the District of Columbia and several territories. It's just a real good example. There are many others nationally and regionally. These legal tools make critical differences. But one of the things you've got to recognize pursuant to coordination in a jurisdiction as near essential during these events is just how much is gonna change in these emergency situations. And as you're seeing here on slide 15, we're talking about the types of emergency declarations that may arise. They're proliferate. They're extensive. There are so many

different types of emergency declarations, all of which have different meanings. They equip various entities with different powers. They may include at the federal level a Stafford Act-type of emergency, a DHHS public health emergency, even Nuclear Regulatory Commission has some powers to do this in regards to nuclear disasters. States have all types of different emergency declarations and in some jurisdictions, with sufficient home role, local governments declare their own emergency statuses as well. What's key here, one of which includes public health emergency declarations authorized to these 33 states you see her in purple on slide 16. This is a very unique type of declaration. It's neat because it actually equips public health authorities typically with authority to respond in real time, and those public health authorities are often very much in tune with how EMS may fit in to the overall state or local based responses. So these states offer that particular declaration, but even in states that don't have this public health emergency specific declaration, you've got opportunities to change the game legally through emergency declarations. It leads to in regards to the congruence of various factors a state of what I like to call legal triage. Now what this slide is trying to show you here on slide 17 is just as you'd be doing medical triage or EMS triage in these types of events dealing with the infusion of so many patients, there's lawyers and policy makers behind the scenes that are engaged in this type of legal triage because we've got multiple levels of government potentially working with lots of partners including EMS providers, a host of actors, EMS personnel included, all with laws that change based on the actual emergency declaration and this report really lays out nicely these changes are significant, they are game changers, and they're things that actually knowing about in real time makes a difference. It's gonna equip you with the powers you may need to respond fully. You'll see how that works as we go through the rest of our presentation.

Let's talk about meeting surge capacity. This is so essential as we know. So what I'd like to try to briefly address here is the legal challenges because there are many that concern the availability of EMS personnel to the extent to which they can address very unique response needs, sometimes out of their own day-to-day jurisdictions. Let's consider those related duties and responsibilities, scope of practice related issues, even location restrictions. But first, let's just give a sort of pictorial sense of what we're talking about here. Again, I'm not focused here, no one does the report on the slight patient surge issues that a lot of hospitals and EMS providers face almost on a weekly basis. We're talking hurricane Katrina-type stuff here. We're talking flipping on a switch and realizing in a very short period of time you've got a major emergency on your hands, you fill the bowl of the superdome with patients all needing essential care potentially, all needing it fast. This is when you need to infuse new personnel often through various different out-of-jurisdiction routes. And what this slide here 21 is attempting to show you is just to sort of capture some of the same themes we've already been discussing. Look at what it's after. It's actually giving you a sense of what and how to think through the key legal issues about where and how you're going to deploy EMS personnel out of their jurisdiction to get them to the site necessary if you have a localized outbreak or issue like for example in hurricane Katrina. This particular illustration gives you a nice way to think it through. So for example, do you have a declared emergency? If you don't, on the left side of your screen suggesting no, those two blue



boxes give you a sense of what your options may be; to get to the site and provide specific care. Are you licensed or certified as an EMS worker in the specific state or pursuant to the National Registry? If no, you better get licensed. This is going to the bottom of the screen, you better undergo the standard licensing process. But if you are licensed, you may be in a state that has reciprocity. There are various tools including something very new called REPLICA which is a Recognition of EMS Personnel Licensure Interstate Compact that may start to percolate among some states; it's that new. We're seeing it start to get some face time in some specific settings. But it may allow for reciprocity much like the Nurse Licensure Compact allows for reciprocity. What's the practical effect of this? If you're licensed in Massachusetts and you're called into action in California, you know day to day you can't go there as an EMS personnel and provide services. There are some exceptions and such. Reciprocity makes that happen in real time, quick. But what if you're in a declared emergency. That's when things get even more expedited. You're seeing on the right side of your screen a couple of options. If you're there and your licensed or certified, you're probably going to get reciprocity immediately if you go to the host jurisdiction through EMAC. You're gonna have a chance to do that. EMAC expressly allows that. If you are not licensed or you're licensed outside of the U.S. states but in a foreign jurisdiction or maybe you have an inactive U.S. license in the EMT; well, that's a possibility there. You still may be able to provide services in a declared emergency because we have what's called waiver authority. It can be quite extensive. Governors use it quite extensively. You're seeing it in a lot of different ways. We might waive the requirements that would normally be there that wouldn't allow that sort of license to be recognized in the host jurisdiction. These are powerful tools available in declared emergencies.

Scope of practice issue cannot be circumvented though. So the situation is typical here, being brief and looking forward to questions on this slide as well, slide 22, is the scenario where an EMT or an EMR or a paramedic or others, they're licensed pursuant to their jurisdiction. Those licenses and those schemes do look dissimilar across states. You're seeing how Florida licenses EMS workers, you're seeing how California does it here, Iowa, the types of licenses involved. Well, the real question comes up here if you're licensed to do one thing in one state and the scope of practice is different in the state you're being called into in one of these medical surge events, can you actually do what the host state is requesting you to even if you're not licensed to do so in your day-to-day jurisdiction, your home jurisdiction. Wow, what a great question. The answer is yes, if you use the right types of tools. What you'll see is those license or reciprocity issues we just discussed in slide 21 really does sometimes clarify how scope of practice will work in those specific places. So do emergency waivers. We could waive at times, and we've seen examples of this in some of the states we looked at, we could flat out waive some of the scope of practice limitations that might be there that would literally stop an EMS worker from actually providing the acute key care that's needed. We have opportunities through other compacts and protocols to sort of address these sorts of issues, finding solutions to them in real time. That's powerful because if you're licensed and capable of going to one of these sites of a particular emergency or medical surge event, gosh if you're stopped in your tracks because you don't know what your

scope of practice may allow you to do, answers to these issues in a triage-like format that will be available. It's just a matter of crafting to make sure we have them.

Liability. Always a major concern. Often the preeminent concern and for good reason. Good heavens, liability events here, we're talking about the risks that EMS personnel and entities may face during these periods of medical surges. Things are uncertain, there's sometimes some chaos, medical triage is messy, there's really critical issues that can arise, and regrettably sometimes mistakes may happen. The sort of mistakes that pursuant to day-to-day routine care might lead to negligence claims and that can be a liability event. Let's examine those liability possibilities against the appropriate backdrop. Let's talk about the liability protections that do exist via emergency laws and other legal sources. So to walk you through this is pretty easy because one of the things you've seen consistently done, and well done at the national level, is this focus on liability. Even for example the Institute of Medicine with its crisis standard of care reporting that so many states are literally working towards developing really sophisticated plans for these medical surge events. They recognize as I was on the committee at the time and I can tell you it was front and center. EMS has a critical role to play. And what you're seeing specifically during a crisis standards of care event is a real shift from conventional to contingency to crisis standards of care. Why am I bringing this up? This isn't just an operational shift. This isn't just something that EMS personnel have to kind of respond to and work with other hospital providers and such to kind of figure out their role. This is a legal shift as well. There's a recognition when you go into crisis mode that the standard of care that would be legally imposed upon EMS personnel and other healthcare workers, it'll change too and that's good because in some ways that's what you'd want to see, but nothing about that would dispense with these types of liability scenarios. The types of things we've seen in prior events like refusals to treat. As regrettable as those may be, they can be liability events for EMS workers, hospital and other type personnel as well. Patient abandonment. Gosh, it can happen. It's regrettable but there are examples of it. What about vehicular liability. The same sort of liability that might arise in a non-emergency but when things get crushed and you're trying to think through all the different issues that may relate to that in an emergency event, these issues can arise, too. Multiple thousands, hundreds of thousands of dollars of potential risk there. And pure negligence claims. Something went wrong, a mistake was made during a medical triage-type of situation. Gosh, could these claims arise? Yes, they certainly could. So could a host of other types of liability risks. So just to think about the civil liability risks is one thing. What about the administrative risks? The potential for something to be done by a licensed EMS worker that really does go far afield from what their scope of practice may allow with no accommodation. Those types of scenarios may lead to administrative sanctions. Licensure replications, other issues there. What about criminal matters as well when something truly goes wrong, a patient abandonment type of scenario, a potential false imprisonment because you're dealing with an infectious disease case, or at least you think so. All of these different types of claims may arise from privacy to vehicular liability to malpractice, all of which may seem like they surmounted to scare off a lot of what we might want and seek through EMS providers during emergencies. But you know, just as you get to the heart of this



storm you recognize one thing. We've got protections in place. This particular illustration noted in slide 30 is just trying to reflect that while things may look dark and the sky looks rainy, we've got a tent of liability protections that are in place and many of these are really effective. They are there to provide very strong liability protection from pure negligence and other types of claims other than for gross negligence or pure criminal behavior for EMS workers, for the entities in some cases. Now without walking through all of these different routes, some which apply to certain types of EMS providers like publicly provided services through a local fire department—sovereign immunity may arise there—as contrasted with private EMS providers of which you may be looking for and seeking Prep Act type of liability protections. What and how these protections work is really nicely laid out in the report. It's essential to understand because these can be really strong and your failsafe method to providing the types of services the nation needs without respective liability hanging over you.

Allocating resources. Let's touch base on these two key points. Let's talk about the mechanisms that are needed to access additional healthcare supplies and personnel. Let's talk about how we'd explore the activation and use of alternate care sites. Both of these sorts of things are highly predictable in these types of emergency events. So how do we think through the ways in which we're legally gonna allocate supplies? The types of things you've gotta have. Medicines, healthcare supplies, the types of things that CDC may have within its strategic national stockpile; vaccines and other issues as they are developed and sometimes generated in midstream in these types of infectious disease or other medical surge events. Allocating supplies quickly is not legally easy in some situations. But to be sure, there are a lot of tools that work here as well. I mentioned EMAC before. It's a major tool for allocating resources very quickly. We're talking about a requesting state being able to—or assisting state to literally transfer resources now and will get payment or figure that particular side of it out later. These can be done rapidly. EMAC makes that possible. So many other tools are available, a lot like EMAC, at the state and federal level to facilitate these types of exchanges to get by and through procurement laws that might slow these sorts of exchanges down. Oh, we've got tools in place to do it and I can assure you those are something hopefully you've experienced if you've dealt with these real time events. If not, we've got the possibility legally to make that happen. But you know what else changes that's kind of interesting? We were fascinated by this because it's a key component of major events just like with what you saw in hurricane Katrina and the newer one Superdome. The locations for where these patients will be situated can change. It's predictable. In fact, it's built in to pandemic plans you see in crisis standard of care plans. We might need to use schools, we might need to use convention centers. Even churches often will line up and be prepared to help out. Arenas. You've seen it before. Airports, potentially parking lots. These alternative locations present very real issues in regards to what's possible legally when you have EMS providers that are often dictated by law as to where they can actually transport emergency patients to. In some states, for example, they clarify and really clearly, if you pick up a patient pursuant to EMS services, you take them to a hospital with an emergency department. That's the location, that's the destination, and in some cases that's the only recognized destination that they're seeing. And we're seeing

exactly one of the great trends is that some states are starting to move beyond that extensively and providing legal support for that because it's so essential. In these specific events you've got to use these types of tools very effectively to make sure these alternative locations can be used and that EMS providers can actually facilitate providing care and getting patients to these specific places. We've got permissive state laws in some jurisdictions that totally recognize the need for alternative locations even in non-emergencies but during emergencies especially. We've got waivers that we can use during those declared emergencies to make sure that we have the potential to waive some sort of conflicting state law and we've got protocols that are set up in advance and so long as you're acting pursuant to appropriate medical supervision, physician or otherwise, EMS providers can actually make these sorts of exchanges happen and be a very effective part of that transportation side of what is essential in these specific events.

Now let's finalize briefly here with our key issues related to reimbursement. There is one key concern that we've heard about a lot through EMS providers. How are we gonna get paid for this sort of service? What's the mechanisms that are in place to allow EMS providers, really putting it on the line in conjunction with federal and state partners at the governmental level and private sector, how are we gonna get reimbursed for these sorts of issues? Now, this is a common concern in hospitals, clinics, other healthcare providers. What we've tried to do in relation to our report, and I really like this section of it as Professor Leila Barraza worked closely with us on some of these key issues, we tried to lay out pathways that you maybe don't know are there so that you have a better sense of what your options may be. These are some. There are multiple different ways to go from providing services during these types of declared emergencies to getting to the end goal which is some level of reimbursement; full or at least partial in some cases. The types of reimbursement pathways are more extensive than what you're seeing on screen but these are some major ones. You've got the potential through FEMA and mutual aid agreements to receive resources, you've got the chains through public insurance, through private insurance, constitutional routes through what's called takings, and agreements that are set up in advance for these specific purposes. I'll take a moment to walk you through a couple of these examples. I'd love to hear more questions and comments as well. What you're seeing on slide 40 is just a very simple illustration but it is something that must be remembered. When you are providing mutual aid pursuant to several different public assistance agreements or contracts, there are opportunities, though they may be very limited in some settings, for reimbursement. Now, what's needed about what we found in the report and what we're crafting here today as a sort of strategy right now so that we all can hear it, you've gotta think about this in advance, identify those routes and know about them and know where you're gonna turn, especially if you're an EMS entity operating and working through multiple different EMS personnel. Know what your options are legally. But we found some and listed them nicely in the report. The chance for a mutual aid to lead to reimbursement for EMS services is there. Here's one way it can be done. This is kind of neat although it's technical and we won't get into all the legal statutory basis for this but what's pursuant to call 1135 waivers pursuant to Medicare and Medicaid provisions. CMS has the potential, during a presidentially declared emergency as well

as HHS public health emergency—you've gotta see both of those simultaneously—to start waiving some of the traditional conditions of participation for hospitals and others such that they can be facilitated in their response efforts. Now, this is kind of neat. How does this play out for the purposes of an EMS provider? Well, one of the neat things that can be done pursuant to the Section 1135 waivers and we've seen it in the past, is that CMS is positioned to actually recognize alternate care sites, the types of things we looked at a couple of slides ago, as sort of legitimate destinations for EMS providers to turn. What does this mean basically? While you might normally day-to-day take patients you may pick up pursuant to EMS 9-1-1 calls or otherwise to the hospital emergency departments, during these types of events implicating Section 1135 waivers, you've got a chance for HHS to actually say we recognize these alternate care sites as basically allowed. They're approved as an alternate destination other than the hospital emergency room and any entity like an EMS provider that gets these patients to these specific places can be reimbursed for that just the same as if they got them to the ED. And that's very neat and the opportunities for this to actually be effective and useful for purposes of Medicare and Medicaid reimbursement can be profound. You know, the Affordable Care Act can never be taken out of the loop here as well as far as its implications. There are two major ones that we were looking at very closely. The first is recognize what Affordable Care Act does. It expands the pool of persons who get insurance and it does that in a lot of different ways without going into great detail, but it actually expands the number of persons who are getting insurance directly through exchanges be it the federal or state levels, and through Medicaid expansions in a lot of jurisdictions, it's greatly expanded the numbers of persons who are receiving Medicaid benefits. So millions of more Americans now have insurance they didn't have before and insurance pursuant to the Affordable Care Act covers EMS services as part of its ten essential services. So you get the links real quick here. The ACA comes into play, it expanded the pool of persons who get access to insurance and that insurance needs to include EMS services including reimbursement opportunities there as well.

Then finally, "Takings". Let's not get into all the constitutional implications here, but just recognize this single thing: If any level of government—federal, state, or local—makes demands on EMS providers for its services and puts them to work and literally takes medicines, takes supplies, takes over a specific facility, takes over ambulances, they can do that during emergencies. It has got the authority in many cases. But they must pay for it. 'Just Compensation' must be provided after the fact. So if you're working with government as a private provider and the government wants you to do these specific things, excellent, but to the degree to which they take that control away from you and literally utilize those resources towards their goals, that's sometimes an essential emergency preparedness response, it will lead to 'Just Compensation' later.

How about some brief conclusions, then I'm really looking forward to questions and comments. What have we gone through? Emergency laws offer a lot of flexible powers, and specifically these waiver abilities to literally put away or put aside impeding measures that might stop EMS providers from really being effective in providing what they can in conjunction with so many partners. Emergency laws offer this chance to do it but they have to be approached and looked at closely in real time events. Licensure reciprocity, interstate compacts, emergency laws. They can expedite the sharing of personnel and supplies extensively. That's such a great feature of these reciprocity provisions so they really do make possible the exchange of EMS providers and health workers across jurisdictions in times of emergency when they couldn't do this otherwise. Numerous laws protect EMS providers and in some cases even entities from liability, especially in declared emergencies. Those declared emergency liability protections are really strong in some cases, not so much in others. But just like you say, if you can find yourself under that tent, you might be protected from a potential onslaught of claims although, again, those are not extensive during many emergency events. Resource sharing enhance federal programs, state laws and agreements. You can have resources. It can be done quickly and there's legal tools to make that happen. And then finally, EMS providers—no guarantees because you've gotta be assured of which route to go but there are paths to reimbursement and there are multiple ways to do that, always with some exceptions but your goal is—and our report tries to lay that out for you—find the path that works best for you based on what and how you're thinking these issues through. With that said, let's take some questions and comments. Thank you for your attention and time. It's been a great pleasure being able to address these sorts of issues and the report, like I say, does a really nice job of laying a lot of this out in nonlegalese so that anybody legally trained or otherwise we believe will be able to understand what we've laid out there. Questions and comments upcoming. Jason, let me turn it back over to you.

**Facilitator – Jason Baker**

Thank you so much James, and we have received some inquiries for your slide deck and as a reminder, we'll post these slides, audio transcripts, and the question and answer summary on a website in the near future. We'll also send that website link to everyone on this webinar distribution. So thank you for your patience with that. At this time we will relay typed questions that you asked during the presentation, largely in the order that they were received. Due to the high volume of participants, please continue to keep your microphones and phones on mute and share questions only via the questions box on your GoToWebinar control panel. Over to you Linda.

**NOTE:** Please refer to the Questions and Answers Summary document on the website for the questions and answers that were posed after the presentation.

**Facilitator – Linda Hodges**

Alright, James, that's all of the formal questions that have come in. We have had a popular question asking, again, about the report and when and where it's going to be made available. I will reiterate what we said previously, we will have the report up on the website. We will send you the link for the website, where you can find all the presentation materials, including the PowerPoint slides and audio transcripts. We hope to have the link ready and sent to you by the fall of 2015, that's this fall when you should get that web link.

**Presenter – James Hodge**

Fantastic. Thank you so much. I think reiterating that will be essential. I am perfectly agreeable, as you can imagine, with any of these slides being exchanged with folks, if they find it helpful, but cannot emphasize enough these slides just give you a sort of brief look at what the report will really lay out for you nicely. So I'm excited about that report being out for EMS providers across the country to be able to really kind of take on and deal with these types of essential legal issues. We hope it will help immensely; we spent a lot of time trying to make sure that it provides some really good options, best practices, and tools for accomplishing that specific end. Jason, should I turn it back over to you?

**Facilitator – Jason Baker**

Thanks, James, and thanks all of you on the call for your time and consideration. James, I want to give you and your team a special thanks for your continued work on preparedness legal issues. As Linda said, we will post this webinar content on a website in the near future. We will send everyone on the call, and on the webinar distribution list, the link when the content is posted. So again, thank you so much for your time and support. At this time we conclude our webinar. Thank you. Take care.