§ 238q. Liability regarding emergency use of automated external defibrillators

(a) Good Samaritan protections regarding AEDs

Except as provided in subsection (b) of this section, any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device—

1. to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;
2. to properly maintain and test the device; or
3. to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if—
   A. the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or
   B. the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person, was not a reasonably sufficient period in which to provide the training.

(b) Inapplicability of immunity

Immunity under subsection (a) of this section does not apply to a person if—

1. the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
2. the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;
3. the person is a hospital, clinic, or other entity whose purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
4. the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

(c) Rules of construction

(1) In general

The following applies with respect to this section:

A. This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

B. With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

C. This section does not waive any protection from liability for Federal officers or employees under—
   i. section 233 of this title; or
   ii. sections 1346(b), 2672, and 2679 of title 28.

(2) Civil actions under Federal law

(A) In general

The applicability of subsections (a) and (b) of this section includes applicability to any action for civil liability described in subsection (a) of this section that arises under Federal law.

(B) Federal areas adopting State law

If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) of this section that in such area arises under the law of the State is subject to subsections (a) through (c) of this section in lieu of any related State law that would apply in such area in the absence of this subparagraph.

(d) Federal jurisdiction

In any civil action arising under State law, the courts of the State involved have jurisdic-
The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(2)(A)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

References in Text
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§ 239. General provisions

(a) Definitions

For purposes of this part:

(1) Covered countermeasure

The term “covered countermeasure” means a covered countermeasure as specified in a Declaration made pursuant to section 233(p) of this title.

(2) Covered individual

The term “covered individual” means an individual—

(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties; or

(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan (as defined in paragraph (7)) approved by the Secretary:

(C) who has volunteered and been selected to be a member of a smallpox emergency response plan described in subparagraph (B) prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified either within or outside of the United States; and

(D) to whom a smallpox vaccine is administered pursuant to such approved plan during the effective period of the Declaration (including the portion of such period before April 30, 2003).

(3) Covered injury

The term “covered injury” means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 239a of this title, to have been sustained by an individual as the direct result of—

(A) administration to the individual of a covered countermeasure during the effective period of the Declaration; or

(B) accidental vaccinia inoculation of the individual in circumstances in which—

(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

(ii) smallpox vaccine has not been administered to the individual; and

(iii) the individual has been in contact with an individual who is (or who was accidentally inoculated by) a covered individual.

(4) Declaration


(5) Effective period of the Declaration

The term “effective period of the Declaration” means the effective period specified in

1 So in original. Probably should be “specialties”.

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TITLE 42—THE PUBLIC HEALTH AND WELFARE

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