

PUBLIC READINESS AND EMERGENCY PREPAREDNESS (“PREP”) ACT

In 2005, Congress passed the Public Readiness and Emergency Preparedness (“PREP”) Act.¹ The PREP Act provides that if the Secretary of Health and Human Services “makes a determination that a disease or other health condition or other threat to health constitutes a public health emergency [. . .] the Secretary may make a declaration [. . .] recommending, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more covered countermeasures [. . .].”² Additionally, the Act provides that during the effective period of such a declaration, no state “may establish, enforce, or continue in effect with respect to a covered countermeasure any provision of law or legal requirement that is different from, or is in conflict with, any requirement applicable under [the Act].”³

On January 31, 2020, the former Secretary, Alex M. Azar II, declared a public health emergency for the entire United States to aid in the response of the nation's health care community to the COVID-19 outbreak.⁴ Pursuant to section 319 of the PHS Act, the Secretary renewed that declaration effective on April 26, 2020, July 25, 2020, October 23, 2020, January 21, 2021, April 21, 2021 and July 20, 2021.⁵ By making such a determination, the Secretary was authorized to deploy certain countermeasures including, *inter alia*, authorization for certain personnel to administer COVID-19 vaccines. The Declaration has undergone a number of amendments since it was first published. These Amended Declarations, as well as an overview of the PREP Act may be found at: <https://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx>. Additionally, DHHS has provided an overview of who may administer COVID-19 vaccines that can be found at: <https://www.phe.gov/emergency/events/COVID19/Documents/covid19-vaccination-wrkfr-factsheet-508.pdf>.

Please note that since the PREP Act is administered by DHHS, and its provisions preempt state law, the Board cannot offer guidance as to whether specific facts fall under the protections offered by the PREP Act. Healthcare providers and systems are encouraged to direct any questions regard the PREP Act to their legal counsel.

¹ 42 U.S.C. §§ 247d-6d, 247d-6e(2006) as modified by the Preparedness Act for Medical Countermeasures Against COVID-19, 85 Fed. Reg. 15198 (Mar. 17, 2020)

² 42 U.S.C.A. § 247d-6d(b)(1)

³ 42 U.S.C.A. § 247d-6d(b)(8)(a)

⁴ 86 FR 41977, Pgs. 41977-41982

⁵ *Id.*