



## White Paper

# CURRENT STATE OF U.S. AED LAWS INCLUDING THE AED LAW REPORT CARD

By: Richard A. Lazar

March 2013

Published by:  
Readiness Systems, LLC  
[www.readisys.com](http://www.readisys.com)

Copyright © 2013 Readiness Systems, LLC – All Rights Reserved



***The Current State of U.S. AED Laws:  
Risk and Uncertainty for Public Access Defibrillation Programs***

© 2013 Readiness Systems, LLC

This work is protected by copyright. It may be used, referenced, and reproduced only as specified and only with proper attribution. Third-party commercial use of this work without the express written consent of Readiness Systems is prohibited. Publishing, displaying, or reproducing this work on any website without the express written consent of Readiness Systems is prohibited.

The information contained in this white paper is not intended to be, does not constitute, and should not be relied upon as legal advice or services. Readiness Systems does not provide legal advice or legal services, and the content in this white paper should not be viewed as legal advice or legal services.

For more information about this white paper, please contact:

**Readiness Systems, LLC**  
[info@readisys.com](mailto:info@readisys.com)  
(855) 291-9100

**About Readiness Systems**

Readiness Systems is the nationally recognized authority on AED program operations, risk management, law, and public policy. Readiness Systems offers a wide array of services to help communities and organizations ensure AED program operational readiness and manage risk. Readiness Systems proprietary SCA Readiness System™ is the most comprehensive and structured AED program development process and operating model and is the only system that follows national SCA Readiness System Guidelines™.

Readiness Systems also serves as a trusted information resource for individuals and organizations responsible for AED program operational readiness. SCA ReadSource™ is a members-only portal that provides access to the AED Law Center™, SCA Readiness System Guidelines, expert AED program and risk management information, as well as other valuable tools and resources to help ensure the long-term success of AED programs.

For more information about Readiness Systems, LLC, the SCA Readiness System, or SCA ReadSource, please visit [www.readisys.com](http://www.readisys.com).

## INTRODUCTION

Generally, Good Samaritan immunity laws are enacted by policymakers to encourage particular types of conduct. For example, the first Good Samaritan law, enacted in California during the 1950s, offered immunity to physicians who voluntarily stopped to render aid to accident victims. The goal of this approach was to encourage physicians to act by reducing the risk of negligence lawsuits.

Similarly, starting in the mid-1990s, legislatures throughout the U.S. began enacting AED-related laws, including Good Samaritan immunity laws, presumably with the intent that such laws would reduce liability risks and therefore encourage more organizations and individuals to buy, place, and use AEDs in public settings. Such laws now exist in every state and vary widely in structure, content, complexity, and scope of coverage. The level of legislative activity in this area continues to be robust with continuous efforts to modify existing laws or add AED placement mandates.

Unfortunately, many existing AED laws actually increase rather than decrease liability risks facing AED owners and users and act as a barrier to those organizations considering the purchase of AEDs. Further, these laws are misunderstood by many in the AED industry. Indeed, persistent myths and misinformation about the true scope and presumed benefits of these laws can be found on the websites of many AED, AED program services, and AED training vendors.

The goal of this white paper is to dispel many of the currently circulating AED law myths (e.g., statements suggesting that AED laws provide broad coverage for all AED program constituents for all activities) by providing a snapshot of the true current state of AED laws in the U.S. More importantly, this white paper represents a call to action for everyone involved in the public access defibrillation movement that improvements are needed if the goal of reduced sudden cardiac death rates is to be achieved. For a suggested path to a modern AED Good Samaritan immunity approach, see our companion white paper *Legislative Strategies for Modernizing U.S. AED Laws* available at [www.readisys.com](http://www.readisys.com).

## MYTHS SURROUNDING AED LAW COVERAGE

Public policy goals associated with existing AED laws are not well-articulated in the statutes themselves or in the current literature surrounding AED public policy. Ostensibly, these laws were originally intended to reduce legal liability risks facing organizations deploying, and

bystanders using, AEDs in non-medical settings. It is also widely perceived, and often stated in published materials, that the existing universe of AED laws offers broad liability protection to all AED program participants for all AED program activities. In stark contrast to these widespread perceptions, current AED laws **do not** protect the full scope of people and AED program activities that should be protected.

## COMPREHENSIVE REVIEW OF STATE AED LAWS

In conjunction with the launch of SCA ReadSource™, Readiness Systems conducted one of the most comprehensive reviews of state AED laws yet undertaken. An overview of our findings is provided below. First, we present selected aggregate highlights of the current state of AED laws in the United States. Second, we present an AED Law Report Card™ assessing the quality of AED laws for each state and the District of Columbia. Specific AED laws, AED law profiles, and AED Law Report Card results for each state can be found in the AED Law Center™ section of SCA ReadSource at [www.readisys.com](http://www.readisys.com).

Overall, AED laws were evaluated in relation to important public health and public policy considerations. Readiness Systems believes the primary objective of AED laws is to promote the public health goal of widespread public access AED placement and use. Doing so requires offering meaningful Good Samaritan immunity protection for all AED program participants and activities in a manner that omits inclusion of operational burdens.

While the public access defibrillation model emerged over 15 years ago, many organizations today remain reluctant to deploy AEDs because of legal liability risks and concerns. We therefore evaluated AED laws based on whether or not, in our judgment, they are structured to help mitigate liability risks in ways designed to encourage more organizations to implement AED programs. Structurally, AED laws generally fall on a continuum between the following two diverse approaches:

- Highly controlling medical model: Laws favoring this approach generally contain burdensome operational requirements that are often difficult to understand, difficult to comply with, and typically not well-suited to public access AED response systems; and

- Open access “any-willing-rescuer” model: Laws favoring this approach generally contain few if any operational conditions, are easier to understand, and are easier to comply with.

In their current form, most AED laws incorporate AED program design and operational requirements, sometimes as conditions of immunity. This occurs despite the fact that no published standards exist defining a “reasonable” AED program. This is an issue currently left for courts to consider on an ad hoc basis. Yet, requirements embedded within AED laws impose mandatory “standards” and operational burdens on every AED program site regardless of size, scope, or unique characteristics. This unusual mix of often-conflicting legislation, and the unrealistic one-size-fits-all approach creates significant risk that AED law requirements will be viewed as establishing a “standard of care.”

The inherent and growing risk of the current approach is that immunity protection will be lost because an organization is unable to understand what constitutes compliance, and thus fails to fully act in accordance with an AED law’s terms. We believe the better approach is to simplify AED Good Samaritan laws by removing operational requirements and to address AED program issues through external guidelines not embedded within AED laws themselves.

It is clear from our review that efforts to use AED immunity laws as a tool to design AED programs has led to significantly increased confusion and legal liability risk. Current laws vary in all 50 states, meaning in effect that program design and operating standards vary in all 50 states. Adding further to this confusion is the growing number of local laws that potentially conflict with state requirements. This AED law quagmire often makes it difficult for organizations potentially interested in deploying AEDs to implement AED programs since the implementation process frequently leads to increased confusion, burdens, and risk. The current state of U.S. AED laws also creates a situation in which it is nearly impossible for AED owners and willing bystanders to know whether they have Good Samaritan immunity protection, and thus they might not buy AEDs, or retrieve and use publicly placed AEDs when called upon to do so.

Structure and clarity of AED laws were key evaluation factors in our assessment and grading process. Because we believe AED laws favoring a highly controlling medical model act as a barrier to AED deployment, and actually increase rather than decrease liability risks facing AED programs, we grade these types of laws lower than those favoring an open access model. In our

view, the best approach is to simplify AED Good Samaritan laws to offer broad protection to all AED program constituents for all AED program activities.

## **SELECTED U.S. AED LAW HIGHLIGHTS AS OF MARCH 2013**

Our research reveals a worrisome state of existing U.S. AED laws. To understand the true nature of the problem, consider the following:

- **15 states (29%) do not offer immunity protection to AED trainers or AED program medical directors and 5 states (10%) do not protect AED owners or those responsible for AED program sites:** All states appear to offer immunity protection to AED users, though 2 states cover only trained AED users (assuming other requirements of the laws are met).
- **43 states (84%) limit immunity protection only to AED use-related activities – other AED program design and operational activities are not protected:** Strikingly, 43 states appear to protect only AED use-related activities (the statutes in 2 other states are unclear on this issue). This means only the actions of AED responders occurring at the time of an SCA event get immunity protection (and by extension, their employers). AED program decisions and actions taken in advance of an SCA event are not protected. For example, decisions and actions regarding how many AEDs to buy, where to place them, who can use them, who is told about them, how people are trained, and others, are not protected. Only 16 states (32%) protect a broad range of AED program activities.
- **6 states (12%) offer only “fictional” immunity protection to one or more AED program constituents and the laws in 9 other states (18%) are unclear – meaning no immunity protection is or may be available at all:** For some AED program constituents, 6 states do not protect at least ordinary negligence and thus offer no meaningful immunity protection at all. The statutory language in another 9 states is unclear on this issue. Forty-one states (90%) do protect at least ordinary negligence for some AED program constituents.
- **22 states (43%) states offer immunity protection only if statutory operational requirements contained in AED laws are met,** regardless of whether meeting or not meeting these operational requirements has anything to do with an SCA response or outcome.

- **When considering all AED law attributes, only 4 states (8%) offer meaningful Good Samaritan immunity protection because they:**
  - Cover all AED program constituents;
  - Cover a broad scope of operational activities;
  - Provide protection for at least ordinary negligence; and
  - Do not condition immunity protection upon compliance with any statutory operational conditions.

[Data as of March 2013]

While well intentioned, current AED laws are not well crafted. As a result, significant gaps now exist in the scope of AED Good Samaritan immunity coverage.

## **AED LAW REPORT CARD GRADING CRITERIA**

The 2013 AED Law Report Card is offered to help organizations better understand the relative quality of applicable AED laws of the states in which they do business, and to help them balance compliance requirements with reasonable AED program design and operational considerations. AED Law Report Card grades for each state are based on assessments of the following four key AED law attributes.

### **People Who May Qualify for Immunity Protection**

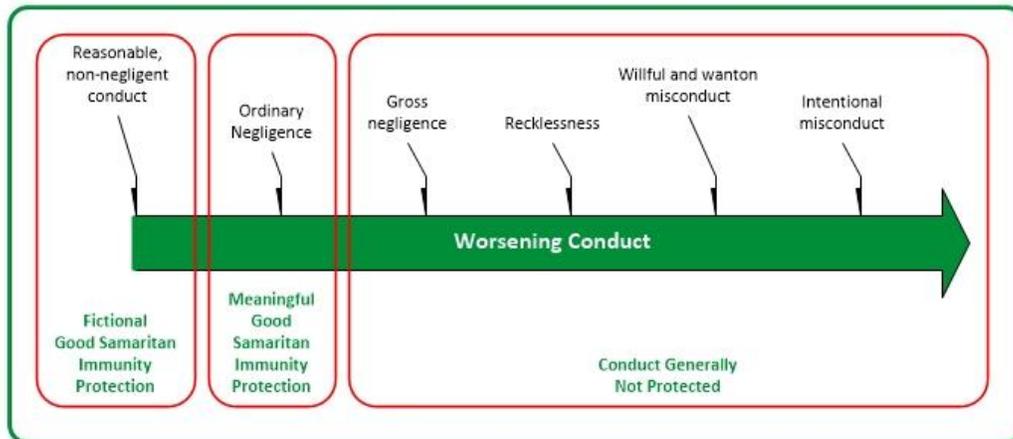
AED program constituents who may be covered by an AED law include (various laws sometimes use differing words to describe these constituents):

- People who own AEDs or are responsible for AED program sites
- AED users, which may include trained and/or untrained users
- AED trainers
- AED program medical directors

Not every law covers every constituent. States that cover all constituents are graded higher than those that do not.

## Degree of Misconduct That May Qualify for Immunity Protection

The degree of misconduct found in the world of negligence law can be characterized along a continuum ranging from non-negligent conduct to intentional misconduct. This continuum is shown in the following chart (different states sometimes use different words but the concept is the same):



By definition, Good Samaritan laws make it more difficult to sue those involved with AED programs by protecting certain levels of misconduct from liability. The level of protection varies widely from state to state. Meaningful immunity laws typically protect misconduct rising at least to the level of ordinary negligence. For example, a law may protect all but “acts of gross negligence or willful or wanton misconduct.” Laws that protect negligent misconduct (or worse) offer a layer of risk management protection if all other attributes of the law are met.

An example of ordinary negligence might be a bystander’s failure to use an AED because an SCA victim is wrongly perceived to have a pulse. An example of gross negligence might be the removal of an AED battery because a person nearby is bothered by the device’s audible alerts signaling the battery is in need of replacement.

In contrast, some states offer only “fictional” immunity that applies only to those who act “as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.” Thus, only reasonable – or non-negligent – conduct is protected in these states. Levels of misconduct, including ordinary negligence and beyond, are not protected at all. These types of laws create the perception that immunity protection is available, though in reality it is not.

The statutory language in a number of states is unclear creating uncertainty about the degree of misconduct that may qualify for immunity protection. In these states, it will take lawyers, juries, and judges to decide the scope of immunity coverage only after a lawsuit ensues.

States that clearly protect at least ordinary negligence are graded higher than those that offer only “fictional” immunity or are unclear.

### **AED Program Activities That May Qualify for Immunity Protection**

Many activities take place within an AED program long before an AED is ever retrieved for use in an actual SCA emergency. Examples include deciding how many AEDs to buy, putting AEDs in various placement locations, maintaining equipment, training, developing policies, and many more. Some of these activities will influence or impact how an organization responds during SCA events. Yet, most state AED laws appear to cover only actions associated with the use of an AED. Other AED program activities that relate to preparing for and responding to an SCA event do not appear to be covered.

AED laws that cover a broad range of activities are graded higher than those that limit coverage only to the use of an AED or are unclear.

### **Operational Requirements Specified in AED Laws**

Most state AED laws impose operational requirements on AED programs and their constituents. Types of requirements may include:

- Maintenance
- Agency notification
- Training
- Medical direction

Some states require compliance with these operational requirements as a condition of immunity and some do not.

Those states that do not include operational requirements are graded higher than those that do. And those laws that require operational compliance as a condition of immunity are graded lowest.

## AED LAW REPORT CARD

		<b>AED LAW REPORT CARD™</b> <small>As of March 2013</small>	
2013 AED LAW REPORT CARD GRADE BY STATE			
State	Grade	State	Grade
Alabama	D	Montana	F
Alaska	D	Nebraska	F
Arizona	B	Nevada	D
Arkansas	D	New Hampshire	B
California	F	New Jersey	C
Colorado	C	New Mexico	F
Connecticut	B	New York	F
Delaware	D	North Carolina	B
District of Columbia	F	North Dakota	D
Florida	D	Ohio	F
Georgia	C	Oklahoma	C
Hawaii	C	Oregon	A
Idaho	C	Pennsylvania	F
Illinois	D	Rhode Island	F
Indiana	C	South Carolina	D
Iowa	F	South Dakota	F
Kansas	F	Tennessee	F
Kentucky	F	Texas	F
Louisiana	C	Utah	A
Maine	A	Vermont	B
Maryland	F	Virginia	D
Massachusetts	C	Washington	B
Michigan	B	West Virginia	F
Minnesota	D	Wisconsin	C
Mississippi	D	Wyoming	D
Missouri	C		

AED Law Report Card - Copyright © 2013 Readiness Systems, LLC - All Rights Reserved

## **NEXT STEPS FOR PROGRESS IN 2013 AND BEYOND**

In contrast to their perceived purpose, most existing U.S. AED laws actually create confusion and liability risk rather than establishing meaningful protection. AED legislation can and should be used as a tool to promote widespread AED deployment and use. This objective can only be achieved, however, if the current approach to AED public policy is radically altered. Creating AED laws that serve as a true safety net, permit and empower large-scale AED deployment, and encourage all willing persons to act as citizen AED responders will go a long way toward increasing the chances of survival for sudden cardiac arrest victims.

Broad changes in legislative philosophy and approach are needed if Good Samaritan immunity is truly to be used as a tool to promote the public health goal of widespread public access AED deployment. Specifically, we believe the following objectives must be achieved before AED public policy can truly drive and support public access defibrillation public health goals:

- Simplify state AED laws by clearly covering all AED program participants and activities, and removing operational burdens imposed on AED programs, especially those requirements that must be met as conditions of immunity.
- Enable state laws, to the extent they continue to serve as the primary source of AED Good Samaritan immunity, to preempt local laws in order to eliminate legislative conflicts and fragmentation that are now emerging.
- Pursue a federal AED Good Samaritan law that preempts state laws in order to create uniformity and consistency throughout the United States.
- Address AED program design, administration, and operational components through external guidelines rather than embedding these types of requirements in AED laws themselves.

We hope this information will provide policymakers and thought leaders with the data necessary to better structure AED laws in ways that meaningfully protect all AED program participants and truly promote widespread AED deployment. This, in turn, will ultimately lead to increased sudden cardiac arrest survival rates.

## **IT'S NOT ABOUT THE LAWS**

AED laws and their perceived meaning and impact are much written and talked about in and around the public access defibrillation community. It is true that the current generation of AED laws are complicated and confusing. But, to put this issue in perspective, AED laws are often overemphasized in importance and have little to do with how an organization responds to an SCA emergency and whether SCA victims are given a meaningful chance at survival. Rather, the people and organizations who buy AEDs, place them in non-medical settings, operate AED programs on a day-to-day basis, and do their best to help save the lives of sudden cardiac arrest victims are the things that matter. Organizations are typically better off focusing their energies on designing AED programs that fit their needs and striving for AED program operational excellence rather than worrying about the laws and the lawyers. In a nutshell, it's about the AED program, not the laws.

## **ABOUT THE AUTHOR**

Richard A. Lazar is the founder and President of Readiness Systems. Richard has been at the forefront of AED program operations, risk management, legal, and public policy issues for the past 20+ years. He has served as a public speaker, AED program operations and risk management consultant, and expert witness to a variety of clients nationwide. Richard is often quoted as an expert on operational, risk management and legal matters surrounding AEDs and has authored numerous articles appearing in a variety of publications. Richard's deep understanding of AED program operations and risk management has led him to testify before the U.S. Congress (Sudden Cardiac Arrest Survival Act), FDA (AED over the counter issues), and state legislatures (AED public policy issues and immunity laws). He has also served as a board member of the Sudden Cardiac Arrest Foundation and advisory board member of the National Center for Early Defibrillation.

Richard has a law degree from Lewis & Clark School of Law (Cornelius Honor Society) and a Bachelor of Science degree in Public Affairs from the University of Oregon.