

Acts (2020)

Chapter 64

AN ACT TO PROVIDE LIABILITY PROTECTIONS FOR HEALTH CARE WORKERS AND FACILITIES DURING THE COVID-19 PANDEMIC.

Whereas, The deferred operation of this act would tend to defeat its purposes, which is to provide liability protections for health care workers and facilities during the COVID-19 pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. As used in this act, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:-

“COVID-19 emergency”, the state of emergency concerning the novel coronavirus disease outbreak declared by the governor on March 10, 2020 pursuant to executive order 591.

“COVID-19 emergency rule”, an executive order, order of the commissioner of public health, declaration, directive or other state or federal authorization, policy, statement, guidance, rule-making or

regulation that waives, suspends or modifies otherwise applicable state or federal law, regulations or standards regarding either: (i) scope of practice or conditions of licensure, including modifications authorizing health care professionals licensed in another state to practice in the commonwealth; or (ii) the delivery of care, including those regarding the standard of care, the site at which care is delivered or the equipment used to deliver care, during the COVID-19 emergency.

“Health care services”, services provided by a health care facility or health care professional, regardless of location, that involve the: (i) treatment, diagnosis, prevention or mitigation of COVID-19; (ii) assessment or care of an individual with a confirmed or suspected case of COVID-19; or (iii) care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency.

“Damages”, injury or loss of property or personal injury or death, including economic or non-economic losses.

“Good faith”, shall, without limitation, include acts or omissions undertaken consistent with the guidelines for crisis standards of care for the COVID-19 pandemic issued by the department of public health, and exclude, without limitation: (i) acts or omissions based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity; (ii) deceptive acts or practices; and (iii) fraud.

“Health care facility”, (i) hospitals, including acute and chronic disease rehabilitation hospitals, as licensed under section 51 of chapter 111 of the General Laws; (ii) state hospitals, mental health centers and other mental health facilities under the control of the department of

mental health pursuant to section 7 of chapter 19 of the General Laws; (iii) hospitals operated by the department of public health pursuant to section 62I of chapter 111 the General Laws, section 69E of said chapter 111 and chapter 122 of the General Laws; (iv) psychiatric hospitals, as licensed under section 19 of said chapter 19; (v) skilled nursing facilities, as licensed under section 71 of said chapter 111; (vi) assisted living residences, as defined in section 1 of chapter 19D of the General Laws; (vii) rest homes, as referenced in said section 71 of said chapter 111; (viii) community health centers, as defined in 130 CMR 405.000 and mental health centers, as defined in 130 CMR 429.000; (ix) home health agencies that participate in Medicare; (x) clinics, as licensed under said section 51 of said chapter 111; or (xi) sites designated by the commissioner of public health to provide COVID-19 health care services, including, but not limited to, step-down skilled nursing facilities, field hospitals and hotels.

“Health care professional”, an individual, whether acting as an agent, volunteer, contractor, employee or otherwise, who is: (i) authorized to provide health care services pursuant to licensure or certification by the board of registration in medicine, the board of registration in nursing, the board of respiratory care, the board of registration of nursing home administrators, the board of registration in pharmacy, the board of registration of physician assistants, the board of allied health professionals, the board of allied mental health and human services professions, the board of registration of social workers or the board of registration of psychologists; (ii) a student or trainee in their approved medical professional services academic training program; (iii) a nursing attendant or certified nursing aide, including an individual who is providing care as part of the

individual's approved nursing attendant or certified nurse aide training program; (iv) certified, accredited or approved under chapter 111C of the General Laws to provide emergency medical services; (v) a nurse or home health aide employed by home health agency that participates in Medicare; (vi) providing health care services within the scope of authority or license permitted by a COVID-19 emergency rule; or (vii) a health care facility administrator, executive, supervisor, board member, trustee or other person responsible for directing, supervising or managing a health care facility or its personnel.

“Volunteer organization”, an organization, company or institution that makes its facility available to support the commonwealth's response and activities under the COVID-19 emergency.

SECTION 2. (a) Notwithstanding any general or special law to the contrary, except as provided in subsection (b), health care professionals and health care facilities shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency; provided, however, that: (i) the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law; (ii) arranging for or providing care or treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to treatment conditions resulting from the COVID-19 outbreak or COVID-19 emergency rules; and (iii) the health care facility or health care professional is arranging for or providing health care services in good faith.

(b) The immunity provided in subsection (a) shall not apply: (i) if the damage was caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by a health care facility or health care professional providing health care services; (ii) to consumer protection actions brought by the attorney general; or (iii) to false claims actions brought by or on behalf of the commonwealth.

SECTION 3. Notwithstanding any general or special law to the contrary, a volunteer organization shall be immune from suit and civil liability for any damages occurring in or at the volunteer organization's facility where the damage arises from use of the facility for the commonwealth's response and activities related to the COVID-19 emergency, unless it is established that the damages were caused by the volunteer organization's gross negligence, recklessness or conduct with an intent to harm.

SECTION 4. This act shall take effect upon its passage and shall apply to claims based on acts or omissions that occur or have occurred during the effective period of the COVID-19 emergency, declared on March 10, 2020 and until terminated or rescinded.

Approved, April 17, 2020.