

SENATE No. 2630

The Commonwealth of Massachusetts



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KARYN POLITO
LIEUTENANT GOVERNOR

April 8, 2020

To the Honorable Senate and House of Representatives,

I am filing for your consideration a bill entitled “An Act to Provide Liability Protections for Health Care Workers and Facilities during the COVID-19 Pandemic.” The legislation would provide our health care workers and facilities with protections from civil liability while they are on the front lines of fighting the COVID-19 pandemic. I respectfully ask for your immediate attention to providing this critical support for the providers and institutions that have committed their skills and resources to the Commonwealth’s response to this public health crisis.

Filing this bill is one of two actions I am taking today to support care providers who are dedicating themselves to saving lives in the COVID-19 pandemic. I am also issuing a directive that will maximize protections for health care workers and facilities under the Federal Public Readiness and Emergency Preparedness Act (the “PREP Act”) during the state of emergency. This directive will ensure that health care workers and facilities that distribute and administer testing, drugs, and medical devices for the diagnosis and treatment of COVID-19 are protected from suit and liability to the maximum extent possible under the PREP Act.

Maximizing the protections of the PREP Act is an important first step. It is not, however, enough by itself to protect our front-line health care workers and providers in these unprecedented circumstances. Because the Act’s limitations on liability apply only to the administration of drugs, testing, and medical devices for the diagnosis and treatment of COVID-19, its protections do not cover care that does not involve these tools.

That is why I am filing this bill, which would provide broader liability protections appropriate to scope of the challenge our health care providers are confronting. This legislation would protect health care professionals, including doctors, nurses, and emergency medical technicians, and certain health care facilities from liability and suit when the care that they provide is impacted by the COVID-19 emergency. It would also provide critical protections for the health care professionals who will work at the field hospitals that we are standing up at the DCU Center in Worcester and the Boston Convention and Exhibition Center, facilities that are not contemplated under traditional standards of care but that are absolutely required to expand our health care system's capacity in this time of crisis.

I cannot overstate the urgency of enacting this legislation. We need to ensure that fear of liability will not prevent the Commonwealth and its medical institutions from acting decisively to deliver the kind of medical response we need during this pandemic. I urge your prompt enactment of legislation

Respectfully submitted,

Charles D. Baker,
Governor

SENATE No. 2630

Senate, April 9, 2020 -- Message from His Excellency the Governor recommending legislation to provide liability protections for health care workers and facilities during the COVID-19 Pandemic.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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 purpose, which is to forthwith to make certain changes in law in response to a public health emergency, each of which is immediately necessary to carry out to accomplish important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience., 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:

1 SECTION 1. As used in sections 1 through 4, inclusive, the following terms shall have
2 the following meanings:

3 “COVID-19 emergency”, the state of emergency declared by the governor on March 10,
4 2020 pursuant to executive order 591.

5 “COVID-19 emergency rule”, an executive order, order of the commissioner of public
6 health, declaration, directive or other state or federal authorization, policy, statement, guidance,
7 rule-making or regulation that waives, suspends, or modifies otherwise applicable state or federal
8 law, regulations or standards regarding (i) scope of practice or conditions of licensure, including

9 modifications authorizing health care professionals licensed in another state to practice in the
10 commonwealth, or (ii) the delivery of care, including those regarding the standard of care, the
11 site at which care is delivered or the equipment used to deliver care, during the COVID-19
12 emergency.

13 “Health care services”, services provided by a health care facility or health care
14 professional, regardless of location, that involve:

15 (a) The treatment, diagnosis, prevention or mitigation of COVID-19;

16 (b) The assessment or care of an individual with a confirmed or suspected case of
17 COVID-19; or

18 (c) The care of any other individual who presents at a health care facility or to a
19 health care professional during the period of the COVID-19 emergency.

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

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

27 “Health care facility”, means:

28 i. Hospitals, including acute and chronic disease rehabilitation hospitals, as licensed
29 under section 51 of chapter 111 of the General Laws;

- 30 ii. State hospitals, mental health centers and other mental health facilities under the
31 control of the department of mental health pursuant to section 7 of chapter 19 of the General
32 Laws;
- 33 iii. Hospitals operated by the department of public health pursuant to chapter 62I of
34 the General Laws, section 69E of chapter 111 of the General Laws and chapter 122 of the
35 General Laws;
- 36 iv. Psychiatric hospitals, as licensed under section 19 of chapter 19 of the General
37 Laws;
- 38 v. Skilled nursing facilities, as licensed under section 71 of chapter 111 of the
39 General Laws;
- 40 vi. Assisted living residences, as defined in section 1 of chapter 19D of the General
41 Laws;
- 42 vii. Rest homes, as referenced in section 71 of chapter 111 of the General Laws;
- 43 viii. Community health centers, as defined in 130 CMR 405.000 and mental health
44 centers, as defined in 130 CMR 429.000;
- 45 ix. Home health agencies that participate in Medicare; or
- 46 x. A site designated by the commissioner of public health to provide COVID-19
47 health care services, including, without limitation, step-down skilled nursing facilities, field
48 hospitals, and hotels.

49 “Health care professional”, an individual, whether acting as an agent, volunteer,
50 contractor, employee or otherwise, who is:

51 i. Authorized to provide health care services pursuant to licensure or certification by
52 the Board of Registration in Medicine, the Board of Registration in Nursing, the Board of
53 Respiratory Care, the Board of Registration of Nursing Home Administrators, the Board of
54 Registration in Pharmacy, the Board of Registration of Physician Assistants, the Board of
55 Registration of Allied Health Professionals, the Board of Allied Mental Health and Human
56 Services Professions, the Board of Registration of Social Workers and the Board of Registration
57 of Psychologists;

58 ii. A student or trainee in his or her approved medical professional services academic
59 training program;

60 iii. A nursing attendant or certified nursing aide, including an individual who is
61 providing care as part of his or her approved nursing attendant or certified nurse aide training
62 program;

63 iv. Certified, accredited or approved under chapter 111C of the General Laws to
64 provide emergency medical services;

65 v. A nurse and home health aide employed by home health agency that participates
66 in Medicare;

67 vi. Providing health care services within the scope of authority or license permitted
68 by a COVID-19 emergency rule; or

69 vii. A health care facility administrator, executive, supervisor, board member, trustee
70 or other person responsible for directing, supervising or managing a health care facility or its
71 personnel.

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

75 SECTION 2.

76 (a) Notwithstanding any general or special law to the contrary, except as provided in
77 subsection (b), health care professionals and health care facilities shall be immune from suit and
78 civil liability for any damages alleged to have been sustained by an act or omission by the health
79 care professional or health care facility in the course of providing health care services during the
80 period of the COVID-19 emergency, provided that:

81 1. the health care facility or health care professional is arranging for or providing
82 health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise
83 applicable law;

84 2. arranging for or providing care or treatment of the individual was impacted by the
85 health care facility’s or health care professional’s decisions or activities in response to or as a
86 result of the COVID-19 outbreak or COVID-19 emergency rules; and

87 3. the health care facility or health care professional is arranging for or providing
88 health care services in good faith.

89 (b) The immunity provided in subsection (a) shall not apply if the damage was caused
90 by an act or omission constituting gross negligence, recklessness or conduct with an intent to
91 harm by a health care facility or health care professional providing health care services, and shall
92 not apply to consumer protection actions brought by the Attorney General, or to false claims
93 actions brought by or on behalf of the Commonwealth

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

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