

**SENATE . . . . . No. 2635**

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**The Commonwealth of Massachusetts**

—  
In the One Hundred and Ninety-First General Court  
(2019-2020)  
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SENATE, April 16, 2020.

The committee on Financial Services to whom was referred the message from His Excellency the Governor recommending legislation to provide liability protections for health care workers and facilities during the COVID-19 Pandemic (printed in Senate, No. 2630),- reports the accompanying bill (Senate, No. 2635).

For the committee,  
James T. Welch

**SENATE . . . . . No. 2635**

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**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;
- 46           x.     Clinics, as licensed under section 51 of chapter 111 of the General Laws; or
- 47           xi.     A site designated by the commissioner of public health to provide COVID-19  
48 health care services, including, without limitation, step-down skilled nursing facilities, field  
49 hospitals, and hotels.

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

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

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

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

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

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

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

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

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

76           SECTION 2.

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

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

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

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

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

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

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