

IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDED DURING STATE OF EMERGENCY

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Senate Bill 899 (S-2) as passed by the Senate
Sponsor: Sen. Michael D. MacDonald
House Committee: Judiciary
Senate Committee: Government Operations
Complete to 5-13-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 899 would amend section 11 of the Emergency Management Act to expand provisions concerning the immunity of certain persons and facilities from civil or criminal liability during a state of disaster declared under the act and extend this immunity to acts performed during a state of emergency declared under 1945 PA 302.

Currently the act provides immunity from liability to doctors, hospitals, and other listed individuals (medical residents and certain out-of-state licensees) for any injury caused while providing services at the behest of an appropriate state or local official during a state of disaster declared by the governor. The immunity does not apply to willful or gross negligence.

Persons with immunity

The bill would revise the provision of immunity to apply to *health care professionals*, *health care facilities*, and other listed individuals for injuries caused in providing *health care services*. The bill would specify that the immunity is from both civil and criminal liability.

Health care professional would mean a person licensed, registered, or otherwise authorized to engage in a health care profession under Article 15 of the Public Health Code.¹

Health care facility would mean one or more of the following:

- A hospital.
- A health maintenance organization.
- A freestanding surgical outpatient facility.
- A county medical care facility.
- A nursing home.
- A home for the aged.
- An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
- A facility or agency described above located in a university, college, or other educational institution.
- A hospice or hospice residence.
- A state-owned surgical center.
- A state-operated outpatient or veterans facility.
- A facility used as surge capacity for any of the health care facilities described above.

¹ Article 15: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-368-1978-15.pdf>

Health care services would mean services provided by a health care facility, health care professional, or other health care provider regardless of the location where those services are provided, including the provision of health care services via telehealth or other remote method.

The bill would also add the following individuals to those covered by the immunity provided by the act:

- Other licensed, registered, or unlicensed health care professionals, or other **health care providers**, and their employers. (**Health care provider** would mean an individual who is otherwise authorized to provide health care services during a state of emergency or state of disaster.)
- Contractors, health care facility administrators, executives, supervisors, board members, trustees, volunteers, students, trainees, or other comparable individuals or agents of health care facilities.
- Other individuals otherwise authorized by executive order or law of this state to provide health care services, with or without a license, during a state of emergency or state of disaster.

Circumstances of providing health care services

The bill would remove a provision that currently requires the covered services to have been provided “at the express or implied request of a state official or agency or county or local coordinator or executive body.”

The bill would specify that covered health services must be provided during a state of disaster declared under the act or a state of emergency declared under 1945 PA 302² in support of this state’s response to that disaster or emergency.

Harm or damages

Currently, the immunity provided by the act is for liability “for an injury sustained by a person by reason of [the provided] services.” Under the bill, the professional, facility, or individual would not be liable “for any **harm or damages** sustained or alleged to have been sustained as a result of any act or omission occurring in the course of arranging for, providing, or making decisions regarding health care services.”

Harm would include any physical or nonphysical act or omission that results in injury or death of an individual.

Damages would mean economic or noneconomic losses for harm to an individual, including the following:

- Compensatory, punitive, pain and suffering, or liquidated damages.
- Back pay or front pay.
- Job restoration rights.
- Attorney fees and costs.
- Any other monetary or nonmonetary recovery available in law or equity.

Exceptions to immunity

The immunity granted under the act does not apply in the event of an act or omission that is willful or gross negligence. The bill would retain this provision.

² <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-302-of-1945.pdf>

Under the bill, immunity also would not apply to an act or omission that constituted willful or intentional criminal misconduct or that constituted intentional infliction of harm by the facility, professional, or other health care provider arranging for, providing, or making decisions regarding health care services.

However, acts or omissions resulting in whole or in part from a shortage of personal protection equipment, resources, medical equipment, or staffing would not be considered gross negligence, willful or intentional criminal misconduct, or intentional infliction of harm under the bill.

Other provisions

The bill would extend immunity from liability to a professional's or facility's reliance on a patient's advance directive witnessed by facility employees, if those employees were not directly involved in the patient's care prior to witnessing the directive.

The bill would stipulate that the immunity provided by the act does not affect the rights conferred on injured employees under the Worker's Disability Compensation Act, including the definition of intentional tort and the exclusive remedy provisions available to employees under that act.

Nothing in the bill would remove or limit any immunity conferred by any other provision of Michigan law, law of another state, or federal law, rule, policy, executive order, or procedure.

COVID-19 pandemic

Finally, under the bill, the immunity granted to professionals and facilities due to this state's response to the COVID-19 pandemic would apply to any acts or omissions while providing health care services related to the COVID-19 pandemic during the COVID-19 state of emergency or state of disaster, including any period of extension or renewal, and would begin retroactive to March 10, 2020, the date of the declaration of the COVID-19 state of emergency. This immunity would remain in effect for the duration of the COVID-19 state of emergency or state of disaster, or through September 30, 2020, whichever is later.

MCL 30.411

FISCAL IMPACT:

The bill would have a minimal fiscal impact on the state and local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.