

## IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDED DURING STATE OF EMERGENCY

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**Senate Bill 899 (H-2) as reported from House committee**  
**Sponsor: Sen. Michael D. MacDonald**  
**House Committee: Judiciary**  
**Senate Committee: Government Operations**  
**Revised 7-23-20**

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

### SUMMARY:

Senate Bill 899 would amend section 11 of the Emergency Management Act to modify provisions concerning the immunity of certain persons and facilities from civil or criminal liability during a state of disaster or state of emergency declared by the governor and to provide for such immunity during the period of March 10, 2020, to January 1, 2021, during the state's response to the COVID-19 pandemic.

#### Immunity from liability under the act

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.

Under the bill, a ***health care provider*** or ***health care facility*** providing ***health care services*** during, and in support of the state's response to, a state of disaster or emergency declared by the governor would not be liable for the death of or an injury sustained by a person by reason of those services. This would still apply to medical residents and listed out-of-state licensees. The immunity would not apply in circumstances described in "Exceptions from immunity," below.

***Health care provider*** would mean one or more of the following:

- An individual licensed, registered, or otherwise authorized to engage in a health care profession under Article 15 of the Public Health Code.
- A paramedic described in section 20908 of the Public Health Code.
- Students, trainees, volunteers, competency evaluated nursing assistants, and temporary nurse aides as authorized under the Centers for Medicare and Medicaid Services COVID-19 emergency declaration blanket waivers for health care providers under section 1135 of the federal Social Security Act and any other licensed, registered, or unlicensed individual otherwise authorized by law, executive order, or directive of this state to render health care services, with or without a license, during a state of emergency or state of disaster or during the period from March 10, 2020, to January 1, 2021, as described below.

***Health care facility*** would mean one or more of the following entities or organizations, including any administrators, executives, supervisors, board members, trustees, employees, and volunteers of that entity or organization:

- 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.
- Any other entity or organization rendering health care services.

***Health care services*** would mean services provided to an individual by a health care facility or health care provider, regardless of where those services are provided, including health care services provided via telehealth or other remote method.

#### Immunity during response to COVID-19 pandemic

The bill would also provide that, notwithstanding any law to the contrary, during the period from March 10, 2020, to January 1, 2021 (as applied retroactively), the immunity described above would extend to any death or injury arising out of or resulting from any act or omission by a health care provider or health care facility while engaging in one or more of the following activities, which would constitute health care services rendered in support of the state's response to the COVID-19 pandemic:

- Rendering COVID-19-related health care services to a person with presumed, suspected, or confirmed COVID-19.
- Arranging, scheduling, rescheduling, canceling, or postponing the rendering of health care services, including a decision to use telehealth or other remote services instead of an in-person encounter, in reliance on or in compliance with any administrative or governmental agency, division, or department policy, rule, or directive or any executive order or law regarding health care services provided by a health care provider or health care facility.
- Acts, omissions, or decisions resulting from a shortage of necessary resources, including blood products, medical equipment, pharmaceuticals, or staffing.

#### Exceptions from immunity

The immunity granted under the act currently does not apply to an act or omission that is willful or gross negligence.

Under the bill, immunity would not apply to an act or omission that was ***willful misconduct*** or gross negligence or that constituted intentional and willful or criminal misconduct or intentional infliction of harm.

***Willful misconduct*** would mean conduct or a failure to act that was intended to cause harm.

***Gross negligence*** means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

#### Immunity conferred by other authority

Finally, the bill would state that nothing in section 11 of the act would remove, supersede, or limit any immunity conferred by any other state or federal law, rule, policy, executive order, directive, or procedure.

MCL 30.411

#### **FISCAL IMPACT:**

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

#### **POSITIONS:**

Representatives of the following entities testified in support of the bill (5-19-20):

- Michigan Hospital Association
- Michigan State Medical Society

The following entities indicated support for the bill:

- American Academy of Pediatrics, Michigan Chapter (5-13-20)
- American Nurses Association-Michigan (7-22-20)
- Ascension Michigan (7-22-20)
- Health Care Association of Michigan (5-19-20)
- Henry Ford Hospital System (5-19-20)
- Insurance Alliance of Michigan (7-22-20)
- LeadingAge Michigan (7-22-20)
- McLaren Health Care (5-13-20)
- Michigan Chamber of Commerce (5-13-20)
- Michigan Council of Nurse Practitioners (5-19-20)
- Michigan Institute of Urology (5-19-20)
- Michigan Osteopathic Association (5-13-20)
- Michigan Society of Hematology and Oncology (7-22-20)

- Munson Healthcare (7-22-20)
- Quest Diagnostics (5-13-20)
- Trinity Health Michigan (7-22-20)

A representative of the Michigan Association for Justice testified in opposition to the bill.  
(5-13-20)

The Negligence Law Section of the State Bar of Michigan indicated opposition to the bill.  
(5-13-20)

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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.