AN ACT

Amending Title 35 (Health and Safety) of the Pennsylvania Consolidated Statutes, in COVID-19 disaster emergency, providing for emergency liability limitations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapter 57 of Title 35 of the Pennsylvania Consolidated Statutes is amended by adding a subchapter to read:

SUBCHAPTER F

EMERGENCY LIABILITY LIMITATIONS

Sec.

5751. Emergency liability limitations.

§ 5751. Emergency liability limitations.

(a) General.--

(1) This subchapter shall:

(i) Only apply to an act or omission made in response to the COVID-19 disaster emergency.

(ii) Not be construed as establishing any liability.

(2) Subsections (b), (c), (d) and (e) may not apply to
any criminal act, or to an injury or death to a person that
results from an act or omission of the person constituting
recklessness or intentional conduct.

(b) Covered health care providers.--A covered health care
provider providing medical care outside the scope of the
provider's typical medical practice or specialty may not be
subject to civil liability for a medical professional liability
claim arising out of an act or omission made during the course
of rendering medical care.

(c) Volunteer, retired and vulnerable practitioners.--A
volunteer or retired practitioner or a vulnerable practitioner
may not be subject to civil liability for a medical professional
liability claim arising out of an act or omission made during
the course of rendering medical care.

(d) Equipment or other goods.--

(1) A person who manufactures or distributes equipment
or other goods manufactured or produced for use by a covered
health care provider in response to the COVID-19 disaster
emergency shall not be subject to civil liability arising
from the nature or condition of the equipment or goods, if
the equipment or goods are reasonably believed to be in good
condition at the time of manufacture or delivery.

(2) This subsection shall apply to all reasonable uses,
including atypical uses justified by the COVID-19 emergency,
of equipment or other goods manufactured or produced for use
by a covered health care provider in response to the COVID-19
disaster emergency.

(e) Employment.--

(1) An employer who acts in good faith may not be
subject to civil liability for any cause of action arising
out of the COVID-19 status of an employee.

(2) An employer shall be presumed to have acted in good faith if the employer complies with all applicable laws relating to employment of the employee, including any lawful orders issued by the Governor as a result of the COVID-19 disaster emergency. A presumption of good faith may be rebutted only by clear and convincing evidence establishing that the employer:

(i) knew or should have known that an employee tested positive for COVID-19;

(ii) failed to take reasonable measures to protect the safety of another employee or individual who had contact with the employee who tested positive for COVID-19; and

(iii) injury or death results to another employee or individual as a result of contact with the employee who tested positive for COVID-19.

(f) Punitive damages.--Upon entry of a verdict including an award of punitive damages arising from a medical professional liability claim, the punitive damages shall be allocated to the State Lottery Fund created under section 311 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law.

(g) Legal fees.--

(1) A contract for legal services for a medical professional liability claim shall be subject to the following:

(i) No aggregate contingency fee, exclusive of reasonable costs and expenses, may exceed:
$10,000,000; plus

(B) twenty percent of any portion of damages between $10,000,000 and $15,000,000; plus

(C) fifteen percent of any portion of damages between $15,000,000 and $20,000,000; plus

(D) ten percent of any portion of damages between $20,000,000 and $25,000,000; plus

(E) five percent of any portion of damages exceeding $25,000,000.

(ii) A contingency fee may not be based on a penalty or civil fine awarded or an amount attributable to a penalty or civil fine.

(2) This subsection may not apply to contracts entered into prior to the effective date of this subsection.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Covered health care provider." Any of the following:

(1) A health care practitioner or a health care provider licensed by a state or a political division of the United States, including pursuant to a waiver of a law or a regulation issued by the United States, the Commonwealth or a local governmental authority.

(2) A health care facility or a temporary site operated by a health care facility during the pendency of the COVID-19 disaster emergency, including a facility authorized to operate under a waiver of a law or a regulation issued by the United States, the Commonwealth or local governmental authority and any legal entity whose primary purpose is the provision of medical care or a parent entity to a health care
facility.

(3) A facility as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, or a parent entity of the facility.

(4) A business, university, facility or organization that provides a venue for medical care.

(5) A licensed, certified or authorized person employed or contracted to provide emergency medical services or to operate an ambulance as defined in section 8103 (relating to definitions) or a parent entity of the person.

(6) An entity providing nursing care as defined in 28 Pa. Code Ch. 201 (relating to applicability, definitions, ownership and general operation of long-term care nursing facilities), provided that the nursing care is in support of the activities of daily living and other instrumental activities of daily living as defined in 55 Pa. Code Chs. 2600 (relating to personal care homes) and 2800 (relating to assisted living residences), or services covered that nursing care providers are obligated to deliver or arrange under their requirements of licensure.

(7) An individual employed or contracted by a covered health care provider who is involved in providing medical care.

"COVID-19." The coronavirus disease 2019, an infectious disease caused by severe acute respiratory syndrome coronavirus 2 that was first identified during December 2019 in Wuhan, China.

"COVID-19 disaster emergency." The proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of
disaster emergency.

"Employer." A business enterprise of any form, a public or nonprofit entity, or a person acting on behalf of the business enterprise or public or nonprofit entity.

"Health care facility." As defined in section 103 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

"Health care practitioner." As defined in section 103 of the Health Care Facilities Act.

"Medical care." The practice of the healing arts, including emergency medical services as defined in section 8103, state-approved medical triage protocols, adherence to crisis standards of care and applicable guidelines, critical care services, services related to the allocation, use or management of ventilators and any services that support medical care, including ambulance services.

"Medical professional liability claim." A claim seeking the recovery of damages or loss from a covered health care provider arising out of any tort, breach of contract or other cause of action in which injury or death resulted from the furnishing of medical care which was or should have been provided.

"Person." An individual, corporation, partnership, organization, association or government entity. In the case of a corporation, partnership, organization, association or governmental entity, including an officer, director, partner, deacon, trustee, council member or other elected or appointed individual responsible for the governance of such entity.

"Volunteer or retired practitioner." A health care practitioner who provides health care services without remuneration from a covered entity, or an individual who has
retired or ceased work as a health care practitioner but otherwise qualified as a health care practitioner within five years preceding the declaration of the COVID-19 emergency, and was not the subject of disciplinary action at the time of retirement or work cessation.

"Vulnerable practitioner." A health care practitioner who has an autoimmune disorder or serious chronic medical condition, including heart disease, diabetes, chronic respiratory disease, and cancer treatment or other medical condition, as determined by the Centers for Disease Control and Prevention, that places the person at a higher risk for complications from COVID-19.

Section 2. This act shall take effect immediately.