
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2639 Session of
2020

INTRODUCED BY DAY, ROTHMAN, JONES, MILLARD AND KAUFFMAN,
JUNE 29, 2020

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 29, 2020

AN ACT

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

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

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

8 SUBCHAPTER F

9 EMERGENCY LIABILITY LIMITATIONS

10 Sec.

11 5751. Emergency liability limitations.

12 § 5751. Emergency liability limitations.

13 (a) General.--

14 (1) This subchapter shall:

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

17 (ii) Not be construed as establishing any liability.

18 (2) Subsections (b), (c), (d) and (e) may not apply to

1 any criminal act, or to an injury or death to a person that
2 results from an act or omission of the person constituting
3 recklessness or intentional conduct.

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

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

15 (d) Equipment or other goods.--

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

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

28 (e) Employment.--

29 (1) An employer who acts in good faith may not be
30 subject to civil liability for any cause of action arising

1 out of the COVID-19 status of an employee.

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

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

11 (ii) failed to take reasonable measures to protect
12 the safety of another employee or individual who had
13 contact with the employee who tested positive for COVID-
14 19; and

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

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

24 (g) Legal fees.--

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

28 (i) No aggregate contingency fee, exclusive of
29 reasonable costs and expenses, may exceed:

30 (A) twenty-five percent of damages up to

1 \$10,000,000; plus

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

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

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

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

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

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

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

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

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

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

1 facility.

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

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

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

11 (6) An entity providing nursing care as defined in 28
12 Pa. Code Ch. 201 (relating to applicability, definitions,
13 ownership and general operation of long-term care nursing
14 facilities), provided that the nursing care is in support of
15 the activities of daily living and other instrumental
16 activities of daily living as defined in 55 Pa. Code Chs.
17 2600 (relating to personal care homes) and 2800 (relating to
18 assisted living residences), or services covered that nursing
19 care providers are obligated to deliver or arrange under
20 their requirements of licensure.

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

24 "COVID-19." The coronavirus disease 2019, an infectious
25 disease caused by severe acute respiratory syndrome coronavirus
26 2 that was first identified during December 2019 in Wuhan,
27 China.

28 "COVID-19 disaster emergency." The proclamation of disaster
29 emergency issued by the Governor on March 6, 2020, published at
30 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of

1 disaster emergency.

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

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

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

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

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

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

28 "Volunteer or retired practitioner." A health care
29 practitioner who provides health care services without
30 remuneration from a covered entity, or an individual who has

1 retired or ceased work as a health care practitioner but
2 otherwise qualified as a health care practitioner within five
3 years preceding the declaration of the COVID-19 emergency, and
4 was not the subject of disciplinary action at the time of
5 retirement or work cessation.

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

12 Section 2. This act shall take effect immediately.