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HOUSE BILL NO. 5073

Offered August 18, 2020

Prefiled August 18, 2020

A *BILL to amend and reenact §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia, relating to disasters; health care providers; immunity.*

Patron—Head

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-225.01. Certain immunity for health care providers during disasters under specific circumstances.

A. *As used in this section:*

"Approved national accrediting organization" means an organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16.

"Health care provider" means (i) any person, corporation, facility, or institution licensed as an inpatient or outpatient surgical center by the Department of Health, a free-standing emergency department or endoscopy center, physician's office, or dental, orthodontic, or endodontic office, including any owner, operator, employee or agent thereof; (ii) any person who delivers health care as defined in § 8.01-581.1; and (iii) any person, corporation, facility, or institution licensed as a general hospital or nursing home pursuant to § 32.1-132, hospice licensed pursuant to § 32.1-162.3, home care organization licensed pursuant to § 32.1-162.9, assisted living facility licensed pursuant to § 63.2-1732, adult day care center licensed pursuant to § 63.2-1733, or alternate care site established by the state or any public or private entity to provide screening, examination, treatment, or other health care services for any individual confirmed or suspected to be infected with the COVID-19 virus, including any owner, operator, employee, or agent thereof.

B. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster by delivering health care to persons injured in such disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster.

~~B.~~ C. In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the applicable standards of an approved national accrediting organization for granting emergency practice privileges.

C. *For the purposes of this section:*

"Approved national accrediting organization" means an organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16; and

"Health care provider" means those professions defined as such in ~~§ 8.01-581.1.~~

D. *In the case of a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared pursuant to § 44-146.17 and in the absence of gross negligence or willful misconduct, a health care provider who withholds the provision of health care procedures for which personal protective equipment is required and which, if delayed, are not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes or leading to disability or death, in accordance with the provisions of an Order of Public Health Emergency declared by the*

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59 *Board of Health or Commissioner of Health, shall be immune from civil liability for any injury or*
60 *wrongful death arising from abandonment by such health care provider of any person to whom such*
61 *health care provider owes a duty to provide health care when the provider was unable to provide the*
62 *requisite health care to the person to whom he owed such duty of care as a result of the provider's*
63 *voluntary or mandatory response to the relevant disaster.*

64 *E. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any*
65 *immunities provided in other state or federal law, including, but not limited to, §§ 8.01-225 and*
66 *44-146.23.*

67 **§ 8.01-225.02. Certain liability protection for health care providers during disasters.**

68 *A. As used in this section:*

69 *"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and*
70 *defined in § 44-146.16.*

71 *"Health care provider" means (i) those professions defined as such in § 8.01-581.1 and (ii) home*
72 *care organizations as defined in § 32.1-162.7.*

73 *B. In the absence of gross negligence or willful misconduct, any health care provider who responds*
74 *to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery*
75 *or withholding of health care when (i) a state or local emergency has been or is subsequently declared*
76 *in response to such disaster; and (ii) the emergency and subsequent conditions caused a lack of*
77 *resources, attributable to the disaster, rendering the health care provider unable to provide the level or*
78 *manner of care that otherwise would have been required in the absence of the emergency and which*
79 *resulted in the injury or wrongful death at issue.*

80 *B. For purposes of this section:*

81 *"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and*
82 *defined in § 44-146.16; and*

83 *"Health care provider" has the same definition as provided in § 8.01-581.1.*

84 *C. In the case of a disaster caused by a communicable disease of public health threat for which a*
85 *state of emergency has been declared pursuant to § 44-146.17 and in the absence of gross negligence*
86 *or willful misconduct, any health care provider who responds to such disaster shall not be liable for any*
87 *injury to or wrongful death of any person arising from the delivery or withholding of health care when*
88 *the emergency and subsequent conditions caused a lack of resources, including insufficient availability*
89 *of personal protective equipment, ventilators, or other drugs, blood products, supplies, or equipment and*
90 *an insufficient availability of trained health care providers and other staff, that is attributable to the*
91 *disaster and that renders the health care provider unable to provide the level or manner of care that*
92 *otherwise would have been required in the absence of the emergency, including situations in which such*
93 *health care provider is required to (i) provide care that, while included in the scope of his license,*
94 *exceeds the credentials or other practice privilege issued to him by the hospital or other health care*
95 *facility at which he delivers services or exceeds the scope of services he would normally provide; (ii)*
96 *implement or execute triage protocols or scarce resources allocation policies necessitated by declaration*
97 *of crisis standards of care; or (iii) use supplies or equipment in a manner that is different from the*
98 *manner in which such supplies or equipment are normally used and that resulted in the injury or*
99 *wrongful death at issue.*