

2020 SPECIAL SESSION I

INTRODUCED

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SENATE BILL NO. 5023

Offered August 18, 2020

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A *BILL to amend and reenact §§ 8.01-225.01, 8.01-225.02, and 44-146.16 of the Code of Virginia, relating to disasters; health care providers; immunity.*

Patrons—Norment, DeSteph and Ruff

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225.01, 8.01-225.02, and 44-146.16 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 those professions defined as such in § 8.01-581.1.

"Local emergency" shall have the same meaning as set forth in § 44-146.16.

"Resource shortage" shall have the same meaning as set forth in § 44-146.16.

"Responds to a disaster" includes (i) complying with an Order of Public Health Emergency, including withholding the provision of procedures, consultations, or surgeries pursuant to an Order of Public Health Emergency; (ii) adopting altered standards of care due to insufficient availability of medical resources including personal protective equipment, drugs, blood products, supplies, or equipment or insufficient availability of trained staff; (iii) allowing a licensed health care provider to deliver care that, while included in the scope of his licensure, exceeds the scope of his credentials at the hospital or other health care facility at which he delivers services or that exceeds the scope of services he normally provides; (iv) delivering care in an alternate care site; (v) implementing or executing triage protocols or scarce resource allocation policies necessitated by health care provider declaration of crisis standards of care; and (vi) using supplies or equipment in a manner that is different from the manner in which such supplies or equipment are usually used in cases other than those involving a local emergency or state of emergency.

"State of emergency" shall have the same meaning as set forth in § 44-146.16.

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~~ affected by such disaster in accordance with the provisions of an Order of Public Health Emergency declared by the Board of Health or Commissioner of Health in response to such disaster shall be immune from civil liability for any act or omission resulting in 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 or state of 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, an Order of Public Health Emergency, a resource shortage, or a condition resulting from such 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 or a state of 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. ~~D.~~ 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

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59 defined in § 44-146.16; and

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

61 D. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any
62 immunities provided in other state or federal law, including, but not limited to, §§ 8.01-225 and
63 44-146.23.

64 **§ 8.01-225.02. Certain liability protection for health care providers during disasters.**

65 A. As used in this section:

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

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

69 "Local emergency" shall have the same meaning as set forth in § 44-146.16.

70 "Resource shortage" shall have the same meaning as set forth in § 44-146.16.

71 "Responds to a disaster" includes (i) complying with an Order of Public Health Emergency,
72 including withholding the provision of procedures, consultations, or surgeries pursuant to an Order of
73 Public Health Emergency; (ii) adopting altered standards of care due to insufficient availability of
74 medical resources including personal protective equipment, drugs, blood products, supplies, or
75 equipment or insufficient availability of trained staff; (iii) allowing a licensed health care provider to
76 deliver care that, while included in the scope of his licensure, exceeds the scope of his credentials at the
77 hospital or other health care facility at which he delivers services or that exceeds the scope of services
78 he normally provides; (iv) delivering care in an alternate care site; (v) implementing or executing triage
79 protocols or scarce resource allocation policies necessitated by health care provider declaration of
80 crisis standards of care; and (vi) using supplies or equipment in a manner that is different from the
81 manner in which such supplies or equipment are usually used in cases other than those involving a
82 local emergency or state of emergency.

83 "State of emergency" shall have the same meaning as set forth in § 44-146.16.

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

91 B. For purposes of this section:

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

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

95 C. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any
96 immunities provided in other state or federal law, including §§ 8.01-225 and 44-146.23.

97 **§ 44-146.16. Definitions.**

98 As used in this chapter, unless the context requires a different meaning:

99 "Communicable disease of public health threat" means a pathogen or illness declared a global
100 pandemic by the World Health Organization or a pathogen or an illness of public health significance, as
101 determined by the State Health Commissioner in accordance with regulations of the Board of Health,
102 caused by a specific or suspected infectious agent that may be reasonably expected or is known to be
103 readily transmitted directly or indirectly from one individual to another and has been found to create a
104 risk of death or significant injury or impairment; this definition shall not, however, be construed to
105 include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon.
106 "Individual" shall include any companion animal. Further, whenever "person or persons" is used in
107 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1, it shall be deemed, when the context
108 requires it, to include any individual.

109 "Cyber incident" means an event occurring on or conducted through a computer network that actually
110 or imminently jeopardizes the integrity, confidentiality, or availability of computers, information or
111 communications systems or networks, physical or virtual infrastructure controlled by computers or
112 information systems, or information resident thereon. "Cyber incident" includes a vulnerability in
113 information systems, system security procedures, internal controls, or implementations that could be
114 exploited by a threat source.

115 "Disaster" means (i) any man-made disaster, including any condition following an attack by any
116 enemy or foreign nation upon the United States resulting in substantial damage of property or injury to
117 persons in the United States including by use of bombs, missiles, shell fire, or nuclear, radiological,
118 chemical, or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and
119 domestic; cyber incidents; and any industrial, nuclear, or transportation accident, explosion,
120 conflagration, power failure, resources shortage, or other condition such as sabotage, oil spills, and other

injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship, or loss of life and (ii) any natural disaster, including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, communicable disease of public health threat, or other natural catastrophe resulting in damage, hardship, suffering, or possible loss of life.

"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases.

"Emergency" means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof.

"Emergency services" means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, firefighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs.

"Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards.

"Hazardous substances" means all materials or substances that now or hereafter are designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or regulation of the United States government.

"Interjurisdictional agency for emergency management" is any organization established between contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the work of disaster prevention, preparedness, response, and recovery.

"Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering threatened or caused thereby, provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering threatened or caused thereby, and provided, however, nothing in this chapter shall be construed as prohibiting a local governing body from the prudent management of its water supply to prevent or manage a water shortage.

"Local emergency management organization" means an organization created in accordance with the provisions of this chapter by local authority to perform local emergency service functions.

"Major disaster" means any natural catastrophe, including any: hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act (P.L. 93-288 as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him.

"Political subdivision" means any city or county in the Commonwealth and, for the purposes of this chapter, the Town of Chincoteague and any town of more than 5,000 population that chooses to have an emergency management program separate from that of the county in which such town is located.

"Resource shortage" means the absence, unavailability, or reduced supply of any raw or processed natural resource or any commodities, goods, or services of any kind that bear a substantial relationship to the health, safety, welfare, and economic well-being of the citizens of the Commonwealth.

"State of emergency" means the condition declared by the Governor when in his judgment the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.