
Judiciary Committee

HB 2492

Title: An act relating to liability of health care providers responding to an emergency.

Brief Description: Concerning liability of health care providers responding to an emergency.

Sponsors: Representatives Rodne, Jinkins, Morrell and Tharinger.

Brief Summary of Bill

- Provides immunity from liability to health care providers (providers) responding to an emergency (declared by the Governor) for acts or omissions in providing or withholding health care under certain circumstances.
- Extends similar immunity to providers credentialing or granting practice privileges to other providers to deliver health care in response to an emergency.
- Provides that the immunity does not extend to acts or omissions constituting gross negligence or willful or wanton misconduct.

Hearing Date: 1/31/14

Staff: Cece Clynych (786-7195).

Background:

Proclamation of Emergency.

The Governor is authorized to proclaim an emergency in any area in the state where a public disorder, disaster, energy emergency, or riot exists that affects life, health, property, or the public peace. The proclamation must be in writing and filed with the Secretary of State, with as much public notice as is possible. The proclamation ends when it is terminated by subsequent order of the Governor, and any proclamation must be terminated when order is restored to the area.

Actions for Injury Occurring as the Result of Health Care.

Per statute, there are three different types of claims that may be brought against health care providers:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

1. Professional negligence - that injury resulted from the failure of the provider to follow the accepted standard of care. Necessary elements of this cause of action include proof :
 - a. of failure to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs acting in the same or similar circumstances; and
 - b. that such failure was the proximate cause of the injury.
2. Breach of warranty - that a provider promised the patient that the injury suffered would not occur.
3. Failure to provide informed consent - that injury resulted from health care to which the patient did not consent.

Uniform Disciplinary Act.

Over 80 credentialed health care providers are subject to professional discipline under the Uniform Disciplinary Act (UDA). These include physicians, nurses, and midwives, as well as mental health counselors, nutritionists, and athletic trainers, to name just a few. The UDA authorizes the Department of Health and other specified agencies, boards, and commissions to take action against a provider for a variety of reasons, including unprofessional conduct, unlicensed practice, and the mental or physical inability to practice skillfully or safely.

Statutory Immunity Provisions.

A variety of immunity provisions exist in statute, including immunity for:

- uncompensated emergency care at the scene of an emergency;
- uncompensated health care services provided at a community health care setting;
- gratuitous, good faith assistance provided at the scene of a boat collision;
- use of a defibrillator at the scene of an emergency;
- performance of duties by a poison center medical director or information specialist; and
- acts or omissions of paramedics and emergency medical technicians rendering emergency medical services under appropriate supervision.

Generally, the immunity afforded by these statutes does not extend to acts or omissions constituting gross negligence or willful or wanton misconduct.

"Gross negligence" means the failure to exercise slight care. According to Washington Pattern Jury Instructions, "It is negligence which is substantially greater than ordinary negligence. Failure to exercise slight care does not mean the total absence of care but care substantially less than ordinary care."

"Willful or wanton misconduct," rather than being a form or gradation of negligence, is a different mental state that includes premeditation or formed intention. It operates in the nature of a defense, such that with proof of willful or wanton misconduct an immunity provision is inapplicable.

Summary of Bill:

A health care provider (provider) responding to an emergency is immune from liability for acts or omissions in providing or withholding health care to any person to whom the provider owes a duty to provide health care when the emergency and subsequent conditions cause a lack of personnel or material resources that renders the provider unable to provide the level or manner of

care that would have been required in the absence of the emergency. This immunity extends to civil liability, professional conduct sanctions, and administrative sanctions. Acts or omissions constituting gross negligence or willful or wanton misconduct are not immunized.

A provider credentialing or granting practice privileges to other providers to deliver health care in response to an emergency is similarly immune from civil liability arising out of the credentialing or granting of practice privileges if:

- the provider so credentialed or granted privileges was responding to an emergency; and
- the procedures used to credential or grant privileges were consistent with the standards for granting emergency practice privileges adopted by the Joint Commission on the Accreditation of Health Care Organizations (Joint Commission).

The following definitions apply for purposes of this immunity statute:

- "Credentialing" means the collection, verification, and assessment of whether a health care provider meets relevant licensing, education, and training requirements.
- "Emergency" means an event or set of circumstances for which the governor has proclaimed a state of emergency.
- "Health care provider" means:
 - a member of a profession subject to the Uniform Disciplinary Act;
 - an employee or agent of a member of such a profession acting in the course and scope of his or her employment;
 - an entity, whether or not incorporated, facility, or institution employing, credentialing, or providing practice privileges to one or more such health care professionals, including, but not limited to, a hospital, ambulatory surgical facility, clinic, health maintenance organization, or nursing home, or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment;
 - a pharmacist or pharmacy; or
 - in the event any of the above is deceased, his or her estate or personal representative.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.