

HB 25
Favorable

TO: The Honorable Luke Clippinger, Chair
House Judiciary Committee

FROM: Elizabeth A. Hafey, Esq.
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Johns Hopkins University and Medicine supports **House Bill 25 – Maryland Health Care Heroes Protection Act**. This bill expands protections for health care facilities and providers during a state-declared catastrophic health emergency. The unprecedented demands of the COVID-19 pandemic response, coupled with countless federal and state orders and directives, have caused potential legal vulnerabilities for Johns Hopkins and our providers. Unfortunately, existing liability protections in Maryland law do not adequately protect our health care workers and staff. House Bill 25 will provide the necessary updates to the existing laws and will clarify the language to reflect the unique challenges facing us right now. Specifically, this bill amends existing law in the following ways:

- Acknowledges the disruption to all aspects of healthcare delivery
- Expands the existing definition of healthcare workers
- Extends liability protections for 180 days after the termination of a state-declared catastrophic health emergency

Over the last ten months, Johns Hopkins, like our fellow hospitals, have been on the frontlines of the COVID-19 pandemic. Our providers and staff have served in crisis mode every day, providing excellent attention and care to our patients. Despite their resilience, the COVID-19 pandemic has taken a physical and emotional toll on our health care workers. The need for this legislation is greater now than ever before.

While Maryland law currently provides liability protections for health care facilities and providers during a state-declared catastrophic health emergency, those protections are insufficient. *See* Md. Public Safety Art. § 14-3A-06. This bill will expand those protections. HB 25 will not create a blanket immunity for hospitals, other health care facilities, or providers. It also does not extinguish or abridge any rights, nor does it preclude potential

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plaintiffs from filing lawsuits. Rather, it will update *already existing* liability protections under the Public Safety Article to address the extraordinary reach of this public health crisis in the following key areas:

HB 25 Recognizes Disruption to All Aspects of HealthCare Delivery

At Johns Hopkins, the COVID-19 pandemic has significantly impacted all aspects of the health care delivery system and required necessary adjustments and changes to the hospitals' operations. Since the Governor declared the existence of a catastrophic health emergency on March 5, 2020, the Maryland Department of Health (MDH) has issued no less than 14 amendments to its Various Healthcare Matters directive (originally issued March 23). While Johns Hopkins recognizes the necessity of MDH's actions, the requirements within these directives—such as the cessation of elective and non-urgent procedures or appointments, conservation of personal protective equipment (PPE), testing priorities, limited visitations, and others—create legal vulnerabilities for hospitals and providers without providing clear protections for the required actions taken pursuant to these orders.

MDH's directives mandated that hospitals stop “elective and non-urgent medical procedures” and expressly stated that the existing protections do not apply to non-COVID-19 care. Specifically, it stated:

MDH does not construe the immunity provisions in Pub. Safety Art. § 14-3A-06 or Health Gen. Art. § 18-907 to apply to a healthcare provider or facility performing *non-COVID-19 related procedures or appointments*. (Emphasis added)

This explicit language presented challenges. This directive required hospitals to delay care by stopping elective procedures, including “non-COVID-19 related procedures or appointments.” But it expressly carved out immunity protections for these types of procedures or appointments. That inconsistency exposes the hospitals directly to claims of negligence for a delay in care that the state had mandated. Throughout the COVID-19 pandemic, we had to remain flexible in our decision-making process to ensure protections for all our providers, staff, and patients, while continuing to provide quality health care to our patients.

HB 25 Expands the Definition of Healthcare Workers

Public Safety Article § 14-3A-06 limits coverage to health care providers and facilities. This bill rectifies this limitation and expands protections for all staff who provide and assist “in the delivery of health care services.” The COVID-19 pandemic has affected all staff, from environmental services, to security, to emergency transport. We have altered changes to staffing and have requested more from them. Other extraordinary flexibilities regarding retired providers, out-of-state providers, and advanced medical or nursing students also created areas of potential liability weaknesses.

HB 25 Extends Liability Protections for 180 days After the Catastrophic Health Emergency Declaration Is Lifted

HB 25 will extend these protections for 180 days after the catastrophic health emergency is lifted. COVID-19 pandemic will likely continue to impact hospital operations after the termination of the catastrophic health emergency. This bill ensures that our health care providers and staff will continue to be protected when the catastrophic health emergency is lifted.

Johns Hopkins takes the safety of our patients and healthcare providers seriously. Our staff and healthcare workers have responded to the COVID-19 pandemic every day, while ensuring we continue to provide excellent care to our patients. Nevertheless, there continues to be uncertainty around this pandemic that will persist long after the catastrophic health emergency ends. This bill, while not a panacea, is a recognition of the unique challenges that our hospitals have faced during this crisis and will continue to do so long after it ends.

Finally, 28 other states and Washington, D.C. have passed laws and/or issued executive orders to grant liability protections for health care facilities and providers since the start of the COVID-19 pandemic. Johns Hopkins urges Maryland to join the ranks of these other jurisdictions and issue a **favorable report on House Bill 25 – Maryland Healthcare Heroes Protection Act.**

cc: Members of the House Judiciary Committee
Delegate Bonnie Cullison