

HB 25 – Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act)

Position: *Support*

Bill Summary

HB 25 protects Maryland’s health care providers who provided services during the COVID-19 pandemic from undue litigation. Specifically, HB 25:

- Expands the definition of “health care provider” to provide immunity to all health care providers, acting in good faith, who provide care in a catastrophic health emergency;
- Protects providers complying with state or federal directives, including the state’s mandate to halt elective and non-urgent procedure, which led to unfortunate delays in care for some Marylanders; and
- Keeps liability protections for 180 days to reflect the fact that health care facilities and providers will continue treating COVID-19 patients after the pandemic, and disruptions to the workforce and supply chain will persist.

Bill Rationale

As part of the State’s response to the COVID-19 pandemic, on March 16, 2020, Governor Hogan issued an Executive Order stating that beginning March 24, 2020, providers must cease all elective and non-urgent medical procedures and appointments. On May 6, 2020, at the direction of the Governor, the Secretary of Health issued a directive to authorize providers to resume elective and non-urgent procedures. Included in that directive was the following provision:

5(C)(III). MDH does not construe the immunity provisions in Pub, Safety Art. S 14-3A-06 or Health Gen. Art. S 18-907 to apply to a healthcare provider or facility performing non-COVID-19 related procedure or appointments.

This language has the effect of *narrowing* the liability protections contained in statute, inadvertently putting providers at risk from litigation regarding patient care. As hospitals move through the phases of the Governor’s Roadmap to Recovery, *all* hospital operations and health care services are performed within the context of COVID-19. All patient care, whether for COVID-19 positive or non-COVID patients, will be provided under the “circumstances” of a pandemic. Those circumstances include scarce resources and equipment, requirements to conserve patient protective equipment, and phased scheduling of non-COVID procedures.

Frontline providers should not face the threat of litigation as a distraction and worry when they are making decisions about how to best treat patients during a public health emergency. It is, therefore, imperative to clarify the provision contained in the directive to acknowledge this reality and not inadvertently expose those providers that needed to delay or modify any patient's treatment plan to cope with the declared catastrophic health emergency.

For the reasons above, MedStar Health requests you give HB 25 a **favorable** report.