



Maryland Association for Justice, Inc.

2021 Position Paper

Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity HB 25 – UNFAVORABLE

Maryland health care providers enjoy robust statutory liability protection, including good faith immunity for actions taken under a catastrophic health emergency proclamation. Md. Pub. Safety Code Ann. § 14-3A-06 currently provides:

A health care provider is immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation.

Section 14-3A-06 provides broad immunity for health care providers carrying out the orders of the Governor or the Secretary of Health during the current catastrophic health emergency.

This broad immunity is precisely what the hospitals wanted: the Association of Maryland Hospitals & Health Systems (“MHA”), insisted that “providers need *liability protection for carrying out the Governor’s orders* so there is no delay or questions surrounding compliance.” *Hearing on S.B. 234 Before the Educ., Health, & Envtl. Affairs Comm.*, 2002 Leg., Reg. Sess. (Feb. 6, 2002) (written testimony of MHA) (emphasis added). And the Secretary of Health interprets § 14-3A-06 in a manner *consistent with that legislative history*:

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.

Section 14-3A-06 is *already* among the “most broad immunity-conferring legislation” in effect in the United States. Valerie Gutmann Koch, *Unique Proposals for Limiting Legal Liability and Encouraging Adherence to Ventilator Allocation Guidelines in an Influenza Pandemic*, 14 DePaul J. Health Care L. 467, 488 n.98 (2013).

HB 25 represents an *intolerable* expansion of the already broad immunity that health care providers currently enjoy. Physicians performing elective procedures, and obstetricians delivering babies, do not need blanket immunity, and victims of unreasonably unsafe medical care do not deserve to have their rights stripped away by over-reaching legislation.

**The Maryland Association for Justice respectfully requests
an UNFAVORABLE report on HB 25.**