

# MEDICAL MUTUAL

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*Liability Insurance Society of Maryland*

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**Bill:** Senate Bill 311 – Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act)

**Date:** February 2, 2021

**Position:** ***SUPPORT***

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## ***Bill Summary***

Senate Bill 311 makes changes to existing immunity protections applicable to health care providers and entities during a catastrophic health emergency proclamation (“health emergency”). First, this bill adds to the definition of health care provider in Maryland Code, § 14-3A-01(e) of the Public Safety Article (“PS”) an employee, agent, or contractor who provides or assists with the delivery of care in a health care facility. Next, PS § 14-3A-06 is amended to provide health care providers immunity from civil or criminal liability for any good faith act or omission done in furtherance of providing health care resulting from a health emergency. This immunity applies to acts or omissions directly or indirectly related to a health emergency for the duration of the health emergency and 180 days after the termination of the health emergency. Finally, this bill includes a provision allowing a litigant to immediately appeal a court’s decision to grant or deny immunity to a health care provider.

## ***Medical Mutual’s Position***

From hospital emergency rooms to the local office of your family doctor, Maryland’s health care heroes have fought and continue to fight the COVID-19 pandemic. They have worked tirelessly to keep Marylanders healthy while also battling stress, resource and staffing shortages, and compliance with ever changing government orders and guidance. Maryland has recognized the importance of protecting health care providers from liability during a health emergency, but the current protections urgently need to be clarified and updated to address the unique circumstances of pandemic. The current immunity provision is ambiguous as to the scope of protection afforded to health care providers. It also does not explicitly address the reality that resource scarcity and government action impact the delivery of health care throughout the health care system, not just for those being treated for a pandemic illness like COVID-19. Although it is our hope that medical malpractice cases alleging negligence due to pandemic-related

circumstances will not materialize, the current law leaves Maryland's health care heroes unnecessarily vulnerable to future litigation.

Senate Bill 311 would preserve and modernize the current liability protections by addressing the realities of the current pandemic and any future pandemic. First, the bill clarifies that a health care provider's good faith act or omission related to providing health care during a health emergency is covered conduct under the current immunity protections. At the beginning of the pandemic and during surges of COVID-19 cases, many health care heroes had to delay elective or nonurgent procedures and appointments, and there was some uncertainty as to whether the failure to act would be covered by the current immunity provision. This change, however, makes it clear that Maryland's health care heroes will be protected if a provider, in good faith, is unable to act due to a government order or guidance.

Second, this bill provides that actions or omissions directly or indirectly related to a health emergency are within the scope of the immunity protections. Health care providers have had to adapt the way they care for patients with COVID-19 while also continuing to care for patients with non-COVID-19 related illnesses, and sometimes external circumstances impacted their ability to deliver that care. With this amendment, Maryland's health care heroes would be protected from liability if they, in good faith, were unable to promptly care for a patient due to lack of resources like personal protective equipment or temporary staffing shortages.

Lastly, Senate Bill 311 affords litigants the ability to immediately appeal a court's grant or denial of a motion to apply immunity to a health care provider. With many Maryland trial courts diligently working to chip away at the backlog of cases caused by the pandemic, this important procedural tool will preserve the valuable resources of both litigants and Maryland courts throughout the State.

For the reasons contained herein, Medical Mutual respectfully requests a ***FAVORABLE*** report of ***Senate Bill 311***.

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