

# **2021 Testimony - SB 311 - Maryland Health Care Her**

Uploaded by: DeLong, Ashton

Position: FAV

# MEDICAL MUTUAL

*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***.

**For more information contact:**

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# **MSDA Supports SB 311 Catastrophic Hlth Emerg. - Im**

Uploaded by: Doherty, Daniel

Position: FAV

**The Maryland State Dental Association Supports SB 311 – Catastrophic Health Emergencies- Health Care Providers – Definition and Immunity**  
*Respectfully submitted by Daniel T. Doherty, Jr. on behalf of MSDA*

The impact of the COVID 19 pandemic has negatively impacted everyone, especially health care providers and facilities. For 52 days Maryland dental offices had to be closed except for emergencies. In answer to a call for needed PPE, many dental offices during this period of closure donated their PPE supplies to various health facilities. However, once the Governor ordered that dental offices could reopen, many dentists found a shortage of PPE, and what was available was being offered at huge increases in cost.

Despite these closures and shortages of PPE, dentistry responded to the needs of their patients, treating them using the best infection control protocols possible under these circumstances. Infection control under COVID 19 is especially difficult in dentistry. Dental treatment by its very nature creates aerosols which make the transmission of COVID 19 a higher risk than in other health professions. Further, dental treatment is always delivered to persons who are not masked.

Unfortunately delivering essential dental care to unmasked patients during this pandemic makes dental providers potentially a target for COVID 19 claims. Despite the current evidence that supports the effectiveness of dental infection protocols, the risk of COVID claims is not insubstantial. Dentists and all of the other health care providers who have continued to treat patients during these trying times are entitled to protection from claims of alleged exposure, or potential exposure to COVID 19, or claims that their sanitation and infection control protocols failed in a particular instance.

SB 311 provides necessary immunity from civil liability to dentists and other providers who have treated patients in good faith during the pandemic. This immunity applies to acts or omissions committed during a catastrophic health emergency or within 180 days of the termination of that emergency.

**For these reasons the Maryland State Dental Association urges that SB 311 be given a favorable report.**

Submitted by:  
Daniel T. Doherty, Jr.  
January 29, 2021

**SB 311 Covid Immunity Support 02022021 FINAL .pdf**

Uploaded by: Egan, Nancy

Position: FAV

Testimony of American Property Casualty Insurance Association (APCIA)

Senate Judicial Proceedings Committee

Senate Bill 311

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

February 2, 2021

Letter of Support

The American Property Casualty Insurance Association (APCIA) represents more than 1200 insurers and reinsurers that provide critically important insurance protection throughout the U.S. and world. In combination, our members write 60% of the U.S. property and casualty market policies. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. In Maryland, our members write 66.6% of all written premium. APCIA appreciates the opportunity to provide written comments in support of Senate Bill 311.

Thousands of COVID-19 related lawsuits have already been filed nationally<sup>1</sup> and we anticipate a “wave” of new lawsuits in the year ahead. Health care providers, as a result of being on the front lines of the pandemic, have not been exempted from suits.

APCIA supports Senate Bill 311 as an appropriately tailored response to the current emergency. First, this proposal would only apply to those who act in good faith to assist in the state’s response to the current health emergency. It is time limited, recognizing the impact and import of the emergency. And it is limited to those health care facilities that are engaged in servicing patients who would be impacted by the health emergency. Second, it recognizes that during the past year and for the foreseeable future front line health care workers have to engage in patient care despite resource constraints that are at times severe and that they have had to navigate dramatically evolving scientific understanding and medical care guidance in treating their patients. Even a year into the emergency we can expect diagnostics and treatment will evolve significantly in the coming months. Third, a court decision regarding immunity shall be immediately appealable, ensuring that the courts will provide clarity as to the scope of the immunity and other questions regarding the applicability of the statute.

For these reasons, the APCIA urges the Committee to provide a favorable report on Senate Bill 311.

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<sup>1</sup> 1 COVID-19 Complaint Tracker, Hunton Andrews Kurth (12.3.20) at <https://www.huntonak.com/en/covid-19-tracker.html>

**2021 MNA SB 311 Senate Side.pdf**

Uploaded by: Elliott, Robyn

Position: FAV





**Committee:** Senate Judicial Proceedings Committee  
**Bill Number:** Senate Bill 311  
**Title:** Maryland Health Care Heroes Protection Act  
**Hearing Date:** February 2, 2021  
**Position:** Support

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The Maryland Nurses Association (MNA) supports *Senate Bill 311 – Maryland Health Care Heroes Protection Act*. This bill would ensure health care professionals serving on the frontlines, including nurses, protections from undue lawsuits, protections for those who have acted in compliance with state and federal directives to delay non-urgent procedures, and extension of liability protections 180-days after the public health emergency ends.

Nurses are on the frontlines of the unprecedented COVID-19 pandemic and are faced with an unpredictable health crisis. Currently, Maryland’s public health immunity statute lacks adequate liability protections for nurses fighting to save lives during COVID-19 and future public health emergencies. Nurses, acting in good faith, should not be distracted by the threat of unwarranted lawsuits while saving lives during a pandemic. The extension of liability protections for health care workers is not unprecedented. Already, 28 states and Washington, DC have passed legislation and/or executive orders to grant liability protections for health care facilities and providers, and it is necessary for Maryland to do the same.

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, including cessation of elective and non-urgent procedures or appointments, conservation of personal protective equipment (PPE), testing priorities, limited visitations, and others. Nurses are directly impacted by these amendments, yet were not offered protections needed to cover actions taken pursuant to these orders. Maryland’s existing public health immunity statute does not offer liability protections to frontline health care workers, especially in the face of a new virus. The Maryland Health Care Heroes Protect Act solves this problem by granting liability protections for health care workers which were unforeseen when the current law was enacted nearly 20 years ago.

Importantly, SB 311 addresses new areas of liability present due to COVID-19 requiring an “all hands-on deck” approach. Retired professionals, out-of-state providers, and advanced medical and nursing students, have answered the call to arms against the pandemic. We owe it to them to ensure their actions undertaken in good faith and for the good of Marylanders are

protected. SB 311 also addresses the need to protect health care workers, such as nurses, after the catastrophic health emergency proclamation is lifted. Nurses will be working at the bedside with patients who are still recovering and facing the lingering effects of COVID-19. The pandemic does not adhere to administrative deadlines, and therefore, it is incredibly important to ensure nurses and other health care heroes continue to be protected in the immediate aftermath.

Thank you for your consideration of our testimony, and we urge a favorable vote. If we can provide any further information, please contact Suhani Chitalia at [schitalia@policypartners.net](mailto:schitalia@policypartners.net) or (240) 506-9325.

# **1- SB 311- Health Care Heroes Act- Written Testimo**

Uploaded by: Frazee, Brian

Position: FAV



Maryland  
Hospital Association

## Senate Bill 311 – Maryland Health Care Heroes Protection Act

**Position: *Support***

February 2, 2021

Senate Judicial Proceedings Committee

### **MHA Position**

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in support of Senate Bill 311. Hospitals are on the frontlines of an unprecedented and unpredictable public health crisis. Our health care heroes have been at the forefront of COVID-19 for nearly a year, putting the duty to care for Marylanders first. The same individuals and organizations facing these challenges also have a very real concern about individual and organizational liability.

Maryland's public health immunity statute needs to be updated to account for the necessary response to this pandemic. It does not currently afford liability protections to all frontline health care workers, especially in the face of a new virus with ever-changing science behind it. These issues must be addressed for the entirety of the COVID-19 pandemic as well as for any potential future public health emergencies. **SB 311 provides sensible updates to Maryland's *existing liability protections to address the extraordinary reach of this public health crisis.*** SB 311 does not create blanket immunity for hospitals, other health care facilities, or providers, nor does the bill create a new liability standard or remove a plaintiff's ability to file a claim.

### **Maryland's Existing Good Faith Standard and Impact of Covid-19**

**Maryland law (Public Safety § 14-3A-06) has provided liability protections for health care facilities and providers acting in good faith during a state-declared catastrophic health emergency for nearly 20 years.** This law was passed in response to the Sept. 11, 2001 terrorist attacks and bioterrorism concerns. Lawmakers at that time could not have imagined how a global threat, such as COVID-19, would challenge Maryland hospitals. Since the Governor declared a catastrophic health emergency on March 5, 2020, the Maryland Department of Health (MDH) issued at least 15 directives that impact how hospitals provide care. The requirements within these directives—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 offering protections to cover actions taken pursuant to these orders. Recognizing the never before seen demands placed on hospitals and health care workers, **28 states and counting, enacted liability protections similar to those**

set forth in SB 311 since the start of the pandemic.<sup>1</sup> SB 311 makes the following three changes:

### **1. Expand Definition of Health Care Workers**

Public Safety § 14-3A-06 currently limits coverage to health care providers and facilities. However, combating this pandemic has truly required an “all-hands-on-deck” approach. From environmental services (e.g., cleaning, laundry) to security and emergency transport, hospital workers involved in critical health care operations had to be nimble and adapt to constantly evolving federal and state guidance, some of which were not in harmony with one another. Moreover, the extraordinary flexibilities regarding retired providers, out-of-state providers, and advanced medical or nursing students created new areas of liability weakness that have never been seen before. **As frontline hospital workers answered the call to arms against COVID-19, we owe it to them to ensure their actions undertaken in good faith and for the good of all Marylanders are protected.**

### **2. Acknowledge Disruption to *All* Aspects of Care**

The pandemic has a profound impact on all aspects of the health care delivery system. The May 6 amendment to MDH’s Various Healthcare Matters directive states:

“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.”

Given the sheer scope of the provisions in MDH’s directives—many of which impacted non-COVID-19 conditions, such as the requirement to cease elective and non-urgent procedures and appointments for almost two months—this interpretation substantially narrows the existing protections. **SB 311 seeks legislative clarification of this protection.**

### **3. Extend Protections for 180 Days Post-Catastrophic Health Emergency**

When the catastrophic health emergency proclamation is lifted, hospital operations will not immediately return to pre-pandemic levels. In addition to global supply chain recovery issues, hospitals will need to retool many of the COVID-19 processes they have built up for over a year. It is also highly likely there will still be COVID-19 patients of varying severity in hospitals when the proclamation is lifted. As we have seen, the pandemic does not adhere to administrative deadlines and we must ensure our health care heroes continue to be protected in the immediate aftermath.

## **Pass the Maryland Health Care Heroes Protection Act**

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<sup>1</sup> American Tort Reform Association (ATRA). “COVID-19 Liability Resources.” [www.atra.org/covid-19-resources/#state-leg](http://www.atra.org/covid-19-resources/#state-leg) (accessed January 27, 2021).

Frontline hospital workers have been responding to this pandemic for almost a year. Even with the introduction of vaccines, there is still a significant amount of uncertainty on the pandemic's future trajectory. As our Maryland health care heroes continue to work for the health, safety, and well-being of all Marylanders, there should be a recognition of the unique challenges they face and subsequent updates to Maryland's law.

For these reasons, we urge a *favorable* report.

For more information, please contact:  
Brian Frazee, Vice President, Government Affairs  
Bfrazee@mhaonline.org

## **2- Covid Medial Liability\_2.pdf**

Uploaded by: Frazee, Brian

Position: FAV

# COVID LAWSUIT RECRUITMENT BY TRIAL ATTORNEYS

Can I Sue for Medical Malpractice Related to COVID-19?

CAN I SUE A NURSING HOME OR HOSPITAL FOR CORONAVIRUS-RELATED NEGLIGENCE?

Medical Malpractice and Preventable Suicide During COVID-19

## How A Coronavirus Lawsuit Can Help

COVID-19 MEDICAL MALPRACTICE CLAIMS FOR MISSED DIAGNOSIS

What Medical Malpractice Claims May Arise From The Coronavirus Pandemic?

Can I File A Medical Malpractice Lawsuit For Treatment Related To COVID-19?

Medical Malpractice in Treating Non-Coronavirus Patients

What You Need To Know About COVID and Wrongful Death

Medical Malpractice for Failure to Treat or Diagnose Coronavirus

IF YOU ARE A VICTIM OF MALPRACTICE OR NEGLECT DURING THE COVID PANDEMIC, WOULD YOU BE ALLOWED TO SUE? COULD YOU WIN?



### **3- 2021 MD Health Care Heroes Protection Act One P**

Uploaded by: Frazee, Brian

Position: FAV

# PROTECT MARYLAND HEALTH CARE HEROES FROM UNDUE LITIGATION

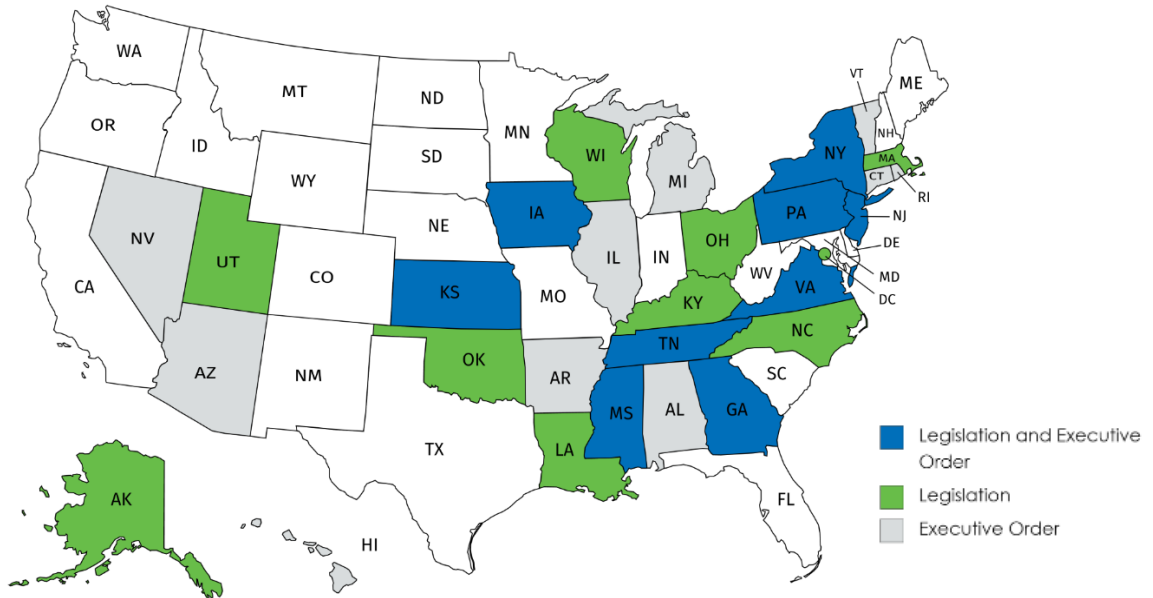
Health care facilities, doctors, nurses, and health care teams are on the front lines of an unimaginable public health crisis. Maryland’s public health immunity statute lacks adequate liability protections for those fighting to save lives during COVID-19 and future public health emergencies. There is a fix for this problem.

## WHY WE NEED YOUR HELP

Maryland’s health care heroes have served in crisis mode for nearly a year. Hospital functions and care delivery, for COVID and non-COVID patients alike, have been severely impacted by the pandemic. State directives ordered the suspension of elective and non-urgent procedures; supply chains for protective gear and other critical resources were broken; staffing shortages abound, and the thousands of workers who persevere are stretched to their limits. Such unique challenges were not foreseen when the current law was enacted nearly 20 years ago.

## WHAT OTHER STATES HAVE DONE

In response to the COVID-19 public health emergency, 28 states and Washington, DC passed laws and/or issued executive orders to grant liability protections for health care facilities and providers.



## HOW THE MARYLAND HEALTH CARE HEROES PROTECTION ACT HELPS

BILL PROVISION	VALUE
Ensure those serving Marylanders during a crisis are protected from undue lawsuits	Account for the all-hands-on-deck pandemic response by granting liability protections to health care facilities, including employees, agents, and contractors, and health care practitioners acting in good faith
Acknowledge the emergency’s disruption to all aspects of care delivery	Protect providers complying with state or federal directives, including the state’s mandate to halt elective and non-urgent procedures, which led to unfortunate delays in care for some Marylanders
Keep liability protections 180 days after public health emergency ends	Health care facilities and providers will continue treating COVID-19 patients after the pandemic, and disruptions to the workforce and supply chains will persist long after

## HOW YOU CAN HELP

PASS THE MARYLAND HEALTH CARE HEROES PROTECTION ACT

## **4- CEO Letter to General Assembly.pdf**

Uploaded by: Frazee, Brian

Position: FAV



Maryland  
Hospital Association

January 27, 2021

The Honorable Adrienne Jones, Speaker of the Maryland House of Delegates  
The Honorable Bill Ferguson, President of the Maryland Senate  
Honorable Members of the Maryland General Assembly

Dear Madam Speaker, Mr. President, and Members of the Maryland General Assembly,

We, the leaders of Maryland's 60 nonprofit hospitals and health systems, thank you for your leadership during the COVID-19 pandemic. Our health care heroes have been fighting on the front lines of this crisis for nearly a year, putting the duty to care for Marylanders first. **We urge you to update existing law that affords liability protections for health care facilities and providers during a state-declared catastrophic health emergency by passing HB 25/SB 311, the Maryland Health Care Heroes Protection Act.**

The pandemic places never before seen demands on health care workers and facilities. For months, providers have cared for Marylanders while facing difficult challenges related to personal protective equipment, testing capacity, and staff. Federal and state directives change often, and at times, conflict with each other. Ambiguity in crisis standards of care and rapidly changing public health guidance led hospitals to take unprecedented measures as they and their staff became a vital component of Maryland's COVID-19 recovery.

Unfortunately, many of the individuals and organizations being asked to take on these challenges are also having to confront the very real concern about individual and organizational liability. Plus, hospitals continue to face huge premium increases for reinsurance and a new "carve-out" by carriers for infectious diseases due to the pandemic's liability risks.

Updating the liability protections for those disproportionately sharing the burden in fighting the pandemic is essential. Maryland's existing statute was passed after Sept. 11, 2001 due to bioterrorism concerns. It did not consider what our health care system would experience during a public health crisis like COVID-19. In 2020, more than half of all states acknowledged these unique challenges by enacting liability protections for health care providers and facilities during this pandemic. Maryland must join their ranks and take this sensible step.

Our mission is to care for our communities and to save lives of Marylanders. We ask you, please, to support our health care heroes.

Respectfully,

The Honorable Adrienne Jones, Speaker of the Maryland House of Delegates  
The Honorable Bill Ferguson, President of the Maryland Senate  
Honorable Members of the Maryland General Assembly  
January 27, 2021  
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Terry Forde  
President & Chief Executive Officer  
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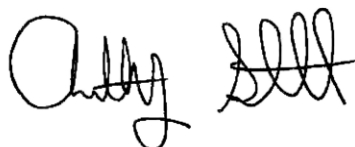
Eunmee Shim  
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Michael Franklin, FACHE  
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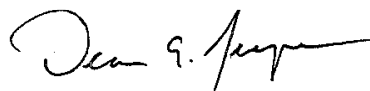
Ed Lovern  
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Honorable Members of the Maryland General Assembly  
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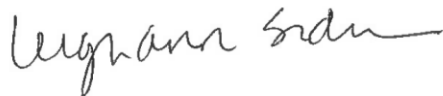
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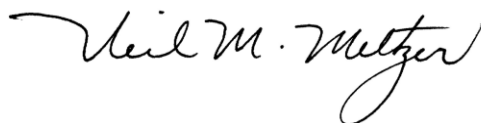
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Craig Carmichael  
President  
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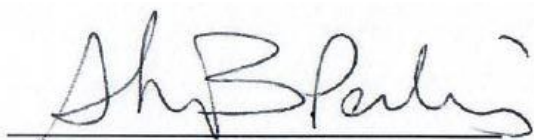
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Honorable Members of the Maryland General Assembly  
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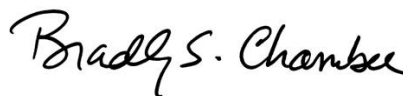
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Jill Donaldson, FACHE  
President, MedStar Harbor Hospital  
Senior Vice President, MedStar Health



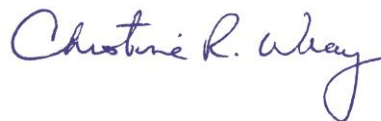
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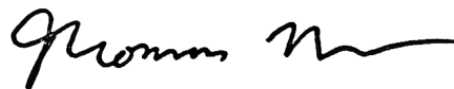
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Stuart Levine, M.D., FACP  
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Harsh Trivedi, M.D., MBA  
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David Maine, M.D.  
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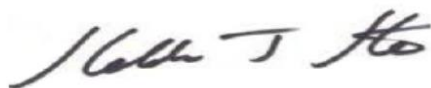
Steven E. Leonard, Ph.D.  
President/Chief Executive Officer  
TidalHealth



Maulik S. Joshi, Dr.P.H.  
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Mohan Suntha, MD, MBA  
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Thomas Smyth, M.D.  
President & Chief Executive Officer  
University of Maryland St. Joseph Medical  
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# **Johns Hopkins - SB 311 Health Care Heroes Protecti**

Uploaded by: Hafey, Elizabeth

Position: FAV

TO: The Honorable William C. Smith, Jr., Chair  
Senate Judicial Proceedings Committee

FROM: Elizabeth A. Hafey, Esq.  
Associate Director, State Affairs

DATE: February 2, 2021

Johns Hopkins University and Medicine supports **Senate Bill 311 – 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. Senate Bill 311 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. SB 311 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

## Government and Community Affairs

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:

### *SB 311 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.

### *SB 311 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.

*SB 311 Extends Liability Protections for 180 days After the Catastrophic Health  
Emergency Declaration Is Lifted*

SB 311 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 Senate Bill 311 – Maryland Healthcare Heroes Protection Act.**

cc: Members of the Senate Judicial Proceedings Committee  
Senator Shelly Hettleman

# **Health Care Heroes - UMMS Testimony SB 311.pdf**

Uploaded by: Martin, Rhya

Position: FAV

## **Senate Bill 311**

### **Catastrophic Health Emergencies – Health Care Providers - Definition and Immunity (Maryland Health Care Heroes Protection Act)**

**Before the Senate Judicial Proceedings Committee**

#### **POSITION: Support**

The University of Maryland Medical System supports Senate Bill 311, dubbed the **Maryland Health Care Heroes Protection Act**, which seeks to clarify, extend and safeguard the protections currently afforded to healthcare providers caring for Maryland’s citizens in the face of a catastrophic health care emergency. The Maryland Health Care Heroes Protection Act is necessary to affirm to our health care providers that the sacrifices they are making and the challenging work they are doing will not leave them exposed to lawsuits arising out of conditions under which these “heroes” have no control.

#### **I. The Maryland Health Care Heroes Protection Act Seeks to Clarify that the Current Statutory Immunities Apply to Treatment of All Patients; Not Just COVID + Patients.**

As a result of the COVID-19 pandemic, Maryland’s health care providers have been asked to render care under ever-changing and challenging conditions. These changing and challenging conditions have affected the care rendered to both COVID + and non-COVID patients. The Maryland Health Care Heroes Protection Act is necessary to validate and strengthen the protections currently available under MD Code Annotated Public Safety Article §14-3A-06 and MD Code Annotated Health General § 18-907. This is especially imperative in light of Secretary Neall’s Amended Directive and Order No. MDH 2020-12-01-01 which states that the protections contained in these articles do not apply to a health care provider or facility performing “non-COVID related procedures or appointments”.<sup>1</sup>

#### **(a) Suspension of Non-Urgent Procedures and Appointments**

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<sup>1</sup> It will be of much legal discussion and argument whether the Maryland Department of Health can determine how expansive or restrictive the protections afforded by MD Code Annotated Public Safety Article §14-3A-06 MD Code and Annotated Health General § 18-907 are. Needless to say the Maryland Association of Justice will contend Order No. MDH 2020-12-01-01 removes any immunity related to care rendered to non-COVID patients during a catastrophic health emergency while those defending our health care providers will advocate that the Secretary of Health is not empowered to dictate the breadth or narrowness of the immunity provisions.



Page Two

Senate Bill 311 - Catastrophic Health Emergencies – Health Care Providers

POSITION: Support

On March 16, 2020 all hospitals, licensed health care facilities and ambulatory surgical centers were directed to cease all elective and non-urgent medical procedures effective at 5 p.m., Tuesday, March 24, 2020.<sup>2</sup> That order affected all patients, not just COVID-19 + patients. As a result of this Order, our health care providers, using their medical judgment, determined which procedures could be delayed (i.e., were elective or not urgent) and for how long. As a result of these delays, patients may argue that their conditions worsened, possibly to the point of disability or death. Patients whose procedures were delayed but were not COVID +, can sue any health care provider who determined that the procedure was not urgent and these health care providers arguably will NOT have the defense of immunity. Thus, the case will proceed through lengthy litigation and possibly result in an adverse judgment against the provider. If this same patient had a diagnosis of COVID-19, the provider would have the affirmative defense of immunity and the lawsuit would not go forward.<sup>3</sup> This disparity of protection under a circumstance in which the provider was following an Order of the Secretary of Health defies reason and logic. The Health Care Heroes Protection Act is necessary to correct this immense and illogical gap in protection.

### **(b) Limited Resources: Staff/Beds/Materials**

The Maryland legislature, in passing MD Code Annotated Public Safety Article §14-3A-06 and MD Code Annotated Health General § 18-907 recognized that a catastrophic health emergency will substantially impact usual health care operations. As Maryland is experiencing a spike in the number of COVID-19 hospitalizations, hospitals across the State are acting urgently to build up capacity with more beds, more equipment, and more skilled caregivers. However, it is possible that should the number of cases of hospitalization continue to increase, capacity will exceed the resources necessary to care for the increased number of patients, placing health care providers in the untenable position of deciding who gets what care in addition to modifying the way care is rendered. Providers making such decisions related to COVID + patients will be immune for their decision making; providers making the same decisions for non-COVID patients will not. Although we thankfully have not yet reached this precipice, health care providers are very concerned that should we, they will unfairly be exposed to litigation, especially as it pertains to the care and treatment of non-COVID patients.

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<sup>2</sup> Subsequent to that Order, as the number of COVID-19 hospitalizations decreased, hospitals were ordered to put into place metrics by which they would determine when elective and non-urgent procedures were to cease.

<sup>3</sup> Immunity would apply unless the provider was not acting in good faith.

Hospitals have already experienced modifications in their hospital operations as a result of their COVID-19 response: the utilization of tele-medicine has increased significantly; placing patients in protective isolation for hours to days while awaiting COVID testing results; monitoring patients who are a safety risk via video camera as opposed to being physically present; changes in documentation practices and other more administrative tasks as staffing is impacted due to staff exposure and the required quarantining that follows. These are just a few of the many changes that have been implemented that impact ALL patients, not just COVID+ patients. The Maryland Health Care Heroes Protection Act will ensure protection for all health care providers who may be sued as a result of the modifications to hospital operations resulting from this catastrophic health emergency, not just those treating COVID+ patients.

**II. The Maryland Health Care Heroes Protection Act Seeks to Expand Protection to Members of the Health Care Team Who are Not Health Care Providers as Currently Defined.**

The Maryland Statutes affording immunity in a catastrophic health emergency confer this immunity to a “health care provider”. Health care provider is defined as a health care practitioner in one statute ( MD Health General § 18-901(g)) and “any individual who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services” (MD Health General § 19-114 (e)) in another.

There are several members of the health care team who would not be considered “health care providers’ under the above referenced Maryland statutes. Examples include: environmental services team members (formerly referred to as housekeeping); supply chain team members; bed management team members and information technology<sup>4</sup> team members. It is anticipated that litigation around negligent exposure to COVID-19 would include the team members responsible for cleaning and dis-infecting a patient’s room or equipment (environmental services). Likewise, should a patient suffer harm due to a failure to transfer a patient to an appropriate level of care during a period of limited bed availability (bed management) or due to a failure to have adequate levels of equipment or supplies, e.g. personal protective equipment (supply chain), the team members responsible for these areas would not have immunity for performing their tasks in good faith. The Maryland Health Care Heroes Protection Act seeks to expand the immunity currently available to include these vital health care team members.

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<sup>4</sup> In order to facilitate vaccination of our patients and the community we have created multiple “builds” and work flows within our electronic medical record. Immunity would not flow to any of the information technology team members should these work flows and “builds” become the subject of litigation.

Page Four

Senate Bill 311 - Catastrophic Health Emergencies – Health Care Providers

POSITION: Support

### **III. The Maryland Health Care Heroes Protection Act Seeks to Safeguard the Protections Available to Our Health Care Heroes**

The Maryland Healthcare Heroes Protection Act seeks to safeguard the immunity Protections for our health care providers and team by (1) extending the protections 180 days after the end of the catastrophic health emergency and (2) making the clarifications and extensions contained in the Act retroactive to the beginning of the catastrophic health emergency. Both of these safeguards are necessary and reasonable.

No one can predict what criteria will be utilized to declare the health emergency over. Disruptions to the work force and supply chains likely will persist long after the emergency has been deemed concluded. Extending the protections of the Maryland Health Care Heroes Protection Act 180 days after the health emergency has ended is necessary because it allows hospitals a reasonable amount of time to pivot back to their non-emergency operating procedures in a controlled manner while continuing to treat COVID-19+ and non COVID patient populations.

The Maryland Health Care Heroes Protection Act, unless applied retroactively, will render no protection for the healthcare providers who have courageously cared for the citizens of Maryland for the past 10 months since the health emergency was declared. As stated above, health care providers arguably do not have the protection of MD Code Annotated Public Safety Article §14-3A-06 and MD Code Annotated Health General § 18-907 when they treat any non-COVID patient. It is imperative that they be afforded this protection. Likewise many team members not included in the definition of health care provider have diligently performed their duties since the beginning of the pandemic. They deserve immunity for their work but will receive none unless the provisions in the bill are retroactive to the beginning of the health emergency.

For the foregoing reasons, the University of Maryland Medical System urges a favorable vote on Senate Bill 311.

Submitted By:

Susan Durbin Kinter, Esquire

SVP, Claims, Litigation & Risk Management

Maryland Medicine Comprehensive Insurance Program

Donna L. Jacobs, Esquire

SVP, Government, Regulatory Affairs and Community Health

University of Maryland Medical System

**VC SB311 supprt ltr 1 21 1.pdf**

Uploaded by: McGreevy, Jenna

Position: FAV

February 2, 2021

The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee  
2 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

The Honorable Jeff Waldstreicher  
Vice Chair, Judicial Proceedings Committee  
2 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

RE: SB 311 – Maryland Health Care Heroes Protection Act -- Support

Dear Chairman Smith and Vice Chairman Waldstreicher:

On behalf of Holy Cross Health, I am writing in strong support of Senate Bill 311 – Maryland Health Care Heroes Protection Act. This legislation will amend an existing section of the Public Safety Article that provides liability protections for health care workers and facilities for an act committed in good faith during a catastrophic health emergency.

COVID-19 has had an unprecedented and challenging impact on our frontline health care workers as they have faced this global pandemic with compassion and determination. For nearly a year, Holy Cross Health has been in the forefront of the pandemic in Maryland, diagnosing the first COVID-19 patient in the state on March 4, 2020, and then becoming the dominant provider of critically ill COVID patients in the first wave of the pandemic. In these last 11 months, and through the second surge, Holy Cross Health has cared for more than 2,800 hospitalized COVID patients and 2,500 outpatients, many of whom were of minority and vulnerable populations.

From the start of this health crisis, Holy Cross Health and the other Maryland hospitals have met the challenges, first by overcoming shortages of PPE and testing reagents, adapting to evolving clinical guidelines, building more facility capacity, complying with state and federal standards and requirements (such as suspending elective surgeries), and now scaling up to provide community vaccinations -- all while caring for critically ill patients and striving to soothe anxious families and loved ones.

Further, Maryland hospitals have faced these challenges without reservation, while knowing that some of our health care colleagues are not covered under current Maryland law that provides liability protections for some but not others during a declared catastrophic health emergency. Hospitals began to address this oversight last spring with the Hogan administration but quickly came to believe that, with our shared baptism-by-fire experiences, we had an obligation to not only advocate for liability protection for our current workforce, but to advocate for the future health care workforce, with the almost certain knowledge that another coronavirus or other deadly infectious disease will strike again.

The Maryland Health Care Heroes Act would simply update the liability protections for those who have been actively fighting on the frontline of this pandemic and allow them to make good faith and necessary decisions without fear of personal liability. This will place Maryland in line with 28 other states that have enacted liability protections for health care workers since the pandemic began.

On behalf of Holy Cross Health and our dedicated workforce and the communities we serve, I respectfully request your support of SB 311 and urge you to vote for a favorable committee report on this worthy and important legislative measure.

Sincerely,



Norvell V. Coots, M.D.  
President & CEO

c. Members of the Senate Judicial Proceedings Committee

# **2021 SB311 - Health Care Heroes.Dr. Neal Naff Test**

Uploaded by: Naff, M.D., Neal

Position: FAV



SB311 – Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity  
(Maryland Health Care Heroes Protection Act)  
Senate Judicial Proceedings Committee – February 2, 2021  
Testimony of Neal Naff, M.D., Chair, Department of, Neurosurgery Department, Sinai Hospital

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I’m writing to you today in SUPPORT of SB311, the Maryland Health Care Heroes Protection Act. I am Chair of Neurosurgery at LifeBridge Health, a regional health system serving primarily Baltimore and the central Maryland region. LifeBridge Health is a regional health system comprising Sinai Hospital of Baltimore, an independent academic medical center; Levindale Geriatric Center and Hospital in Baltimore; Northwest Hospital, a community hospital in Baltimore County; Carroll Hospital, a sole community hospital in Carroll County, and; Grace Medical Center in Baltimore (formerly Bon Secours Hospital).

I want to share with you my personal experience delivering medical care during this pandemic, declared a “catastrophic health emergency” and which, in my experience, is the most challenging crisis faced by health providers and hospitals in my lifetime. A few examples:

- My department reduced staffing by 20 per cent as a result of COVID related restrictions particularly as it related to outpatient care. While we remained responsive to patient needs, the pace of our response may have been slower than usual on some occasions. We are not aware of any specific poor outcomes, but I am concerned that plaintiff attorneys – and we have all seen the ads seeking patients as clients - will target physicians and other providers who may have been less than optimally responsive when, in fact, they were not allowed to be open under existing executive orders.
- Another example: a neurosurgery patient who goes to the ER and needs an ICU bed. Given the demand for ICU level services during the pandemic, sometimes an ER room would be converted into an ICU-like treatment area, to the extent possible. ER physicians and nurses, while competent providers, are not ICU staff, and do their best under challenging capacity constraints. Being concerned that they are performing tasks outside the scope of their regular duties is not fair to them as they dive in to help with the crushing needs.

(continued)



- Consider an orthopedist who, during the shutdown, was not doing elective surgery. In many instances, these physicians assisted in placing IV lines into patients' arms, mostly those not suffering from COVID. This plan freed up Internal Medicine physicians to help COVID patients. Orthopedists don't typically insert IV lines, but rose to the occasion to meet the needs. We don't want them worrying about being sued for performing tasks outside their normal duties – nothing was normal during this catastrophic health emergency.

The unprecedented demands of the pandemic response combined with countless unclear and confusing federal and state orders and directives have caused potential legal vulnerabilities for Maryland's health care system and its health care providers like me. Existing liability protections in Maryland law need to be updated and clarified to reflect the unique challenges facing us right now and to make clear the protections to be applied.

I urge you to recognize our state's frontline health care workers and show them your support. Please give a FAVORABLE report to SB311.

# **2021 SB311 Health Care Heroes.Marta Nathanson Tes**

Uploaded by: Nathanson, Martha

Position: FAV



SB311 – Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act) - **SUPPORT**  
Senate Judicial Proceedings Committee – February 2, 2021  
Testimony of Martha D. Nathanson, Vice President, Government Relations and Community Development, LifeBridge Health

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I am writing in strong **SUPPORT** of Senate Bill 311 – Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act). LifeBridge Health is a regional health system comprising Sinai Hospital of Baltimore, an independent academic medical center; Levindale Geriatric Center and Hospital in Baltimore; Northwest Hospital, a community hospital in Baltimore County; Carroll Hospital, a sole community hospital in Carroll County, and; Grace Medical Center in Baltimore (formerly Bon Secours Hospital).

Hospitals and our health care providers are on the frontlines of an unprecedented public health crisis. Our employees consistently perform heroically in their daily activities targeted to saving lives. They see the advertisements by plaintiff attorneys and wonder if they will be targeted in a lawsuit simply because they stretched beyond their customary duties to assist in providing care to patients during a time when hospitals and medical facilities were under great strain.

SB311 amends Maryland’s existing public health immunity statute by extending liability protections to all frontline health care workers facing work in an environment in which the rules governing practice and the science itself were changing on a weekly and sometimes daily basis. This bill does not create blanket immunity for any participants in the health care system, nor does it remove a plaintiff’s ability to file a claim. It updates *existing* liability protections to address the extraordinary reach of this public health crisis, as well as addressing future public health emergencies.

At LifeBridge we have been flexible and innovative in addressing the challenges of this pandemic. For example, when personal protective equipment (PPE) was not readily available nationwide and for that matter internationally, we set up a factory-like operation to produce our own face masks and gowns, redeploying furloughed employees to this enterprise. When in-person medical appointments were cancelled due to State-mandated closures, we employed telehealth and other means of patient communication. During this time, when we faced intermittent staff shortages, due either to providers being stricken with the disease or to the volume of patients, we asked providers to work in areas outside of their normal roles. While patient safety was always paramount and no one was asked to do anything for which they were not qualified by training, there is always an inherent risk in such situations. These and other responsive actions create potential legal vulnerabilities, and our heroes – yes, they are truly the heroes of these dark days - need protection to cover their actions taken in good faith in this catastrophic health emergency.

For all of the above reasons, we urge the Committee to give SB311 a **FAVORABLE** report.

For more information, please contact:  
Martha D. Nathanson  
[mnathans@lifebridgehealth.org](mailto:mnathans@lifebridgehealth.org)  
443-286-4812

# **SB311 Testimony - AHC.pdf**

Uploaded by: Nicklas, Andrew

Position: FAV



820 West Diamond Avenue, Suite 600  
Gaithersburg, MD 20878  
[www.AdventistHealthCare.com](http://www.AdventistHealthCare.com)

February 2, 2021

To: The Senate Judicial Proceedings Committee  
From: Adventist HealthCare  
Re: SB311 – Maryland Health Care Heroes Protection Act

**POSITION: SUPPORT**

Adventist HealthCare’s hospitals, providers and staff have served on the front lines for nearly a year, caring for our patients and our communities, in response to the COVID-19 epidemic.

The teams at Shady Grove Medical Center, White Oak Medical Center and Fort Washington Medical Center, all had to immediately and continuously adapt to the unprecedented demands of the pandemic response, as well as, countless federal and state orders and directives impacting our operations. Adapting to these extraordinary and everchanging circumstances has caused potential legal vulnerabilities for our health care system and employees.

The pandemic has had a profound impact on all aspects of the health care delivery system. The scope of the response required to meet the demands of the pandemic, especially in the days of the initial surge, impacted care delivery throughout our hospitals. All hospital personnel were called on to adjust their routines and adapt to evolving federal and state guidelines. Combined with the extensive orders issued from the Maryland Department of Health, including the requirement to cease elective and non-urgent procedures for almost two months, all providers and patients, COVID and non-COVID alike, felt the impact of this public health emergency.

Existing liability protections in Maryland law need to be updated and clarified to reflect the unique challenges facing us right now. Maryland’s existing statute does not offer liability protections to all frontline health care workers, nor does it cover care delivered to non-COVID patients. These issues must be addressed to cover the entire impact of the COVID-19 pandemic. SB 311 does not create blanket immunity for hospitals and does not change the liability standard in current law. Instead, it updates already existing liability protections to address the extraordinary reach of this public health crisis.

Please support Maryland’s hospitals and front-line workers as we continue to deliver care and compassion in the face of this unprecedented crisis.

For these reasons, Adventist HealthCare supports SB311 and encourages the committee to give a **favorable report**.



**SB0311\_HEROES\_MLC\_FAV.pdf**

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0311  
CATASTROPHIC HEALTH EMERGENCIES – HEALTH CARE PROVIDERS –  
DEFINITION AND IMMUNITY (MARYLAND HEALTH CARE HEROES PROTECTION  
ACT)**

**Bill Sponsor:** Senator Hettleman

**Committee:** Judicial Proceedings

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Cecilia Plante, co-chair

**Position:** FAVORABLE

I am submitting this testimony in favor of SB0311 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

Our Coalition members are in awe of the dedication and efforts of all of the health care workers, doctors, nurses and others who worked tirelessly to save lives during the pandemic. The conditions they worked under were more akin to battlefield conditions than what they trained for. They had minimal or no necessary supplies of PPE and other essential items. And yet, what they achieved is pretty phenomenal. We owe them our thanks and, in many cases, our lives.

After such extraordinary service, it is important that they not become fodder for legal challenges of liability because they could not save everyone. This bill will put in place protections for them from undue lawsuits by recognizing that the conditions they worked under were exceptionally stressful and difficult. It will also extend those protections 180 days after the emergency to recognize that emergency conditions will still exist after the emergency is declared to have run its course.

We support our heroes and recommend a **FAVORABLE** report in committee.

**SB311 - Health Care Heroes.Richard Rohrs.pdf**

Uploaded by: Rohrs, Rick

Position: FAV



SB311 – Catastrophic Health Emergencies - Health Care Providers – Definition and Immunity - (Health Care Heroes Protection Act) - **SUPPORT**

Senate Judicial Proceedings Committee – February 2, 2021

Testimony of Richard Rohrs, PA-C, SFHM, DFAAPA – Assistant Vice President Provider Operations at Northwest Hospital, LifeBridge Health

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I'm writing to you today in SUPPORT of SB311, the Maryland Health Care Heroes Protection Act.

I am Assistant Vice President of Provider Operations at Northwest Hospital in Randallstown, Maryland. In my role I oversee the operations of our Emergency Services, Hospitalist programs, Surgical House Staff, Anesthesia, Hospice, among other areas.

I want to share our experience delivering medical care during this pandemic, declared a “catastrophic health emergency” and which, in my experience, is the most challenging crisis faced by health providers and hospitals in my more than forty years of practice.

We were challenged in so many areas with some having services reduced or delayed while others were inundated with high volumes. In all cases, we were faced with the challenge of confronting an unknown disease entity that was constantly evolving, both in its clinical presentation but even more importantly, in the treatment protocols. In its earliest stages, clinical recommendations from highly respected sources were changing on almost a weekly basis as new research findings were published. Many times, we were faced with conflicting reports from different studies from across the globe.

Over the last year our knowledge and skills in treating COVID-19 have significantly improved as recommendations from the CDC and other leading sources have been refined. Our fear is that we will be faced with Monday morning quarterbacking by applying the standards in place today with the treatment options used in the beginning of the pandemic. In the area of testing and drug therapies, many of the cornerstone practices that exist today were in limited supply throughout the country during the early to mid-phases of the pandemic.

During this time, we were also faced with critical shortages of health care providers due to the volume of patients or in worse case, when the providers themselves were stricken with the infection. While the latter tragedies may have only made the news for a few days, they hung heavy on the heart of their colleagues for much longer.

With these shortages, we often asked providers to work in areas outside of their normal roles. While patient safety was always paramount and no one was asked to do anything for which they were not qualified by training, there is always an inherent risk in such situations.

(continued)

It seems unfair to now ask those providers who “ran towards the fire” to now must wait in fear that their heroic actions might be twisted or misinterpreted after the fact with potential liability.

The unprecedented demands of the pandemic response combined with countless unclear and confusing federal and state orders and directives have caused potential legal vulnerabilities for Maryland’s health care system and its health care providers. Existing liability protections in Maryland law need to be updated and clarified to reflect the unique challenges facing us during this, and any catastrophic health emergency.

I urge you to recognize our state’s frontline health care workers and give them your support. Please give a FAVORABLE report to SB311.

**SB0311-JPR\_MACo\_SUP.pdf**

Uploaded by: Sanderson, Michael

Position: FAV



## Senate Bill 311

*Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity  
(Maryland Health Care Heroes Protection Act)*

MACo Position: **SUPPORT**

To: Judicial Proceedings Committee

Date: February 2, 2021

From: Michael Sanderson

The Maryland Association of Counties (MACo) **SUPPORTS** SB 311. The bill creates a reasonable liability protection for health care workers who have acted in good faith to provide care during the recent and ongoing health pandemic emergency.

The ongoing COVID-19 crisis that struck Maryland and much of the world in 2020 has posed considerable public health and fiscal challenges. Maryland's response to this unique circumstance must reflect a proper balance of consideration for individuals, but also for health care practitioners, who have engaged in reasonable conduct while pressed into emergency service but nonetheless may be connected to the virus's spread, or other related outcomes that may trigger litigation.

SB 311 suggests such a balanced approach. Its "good faith" standard offers a reasonable measure to separate substantial claims from other with less merit. Health care workers, including emergency medical technicians, who sought to act reasonably (many of whom are still fighting for their long-term survival) would be spared the uncertainty of a potential wave of COVID-19 lawsuits arising from even the most trivial workplace decisions. These protections would expire after the current health crisis abates.

SB 311 would create a fair standard to prevent health care workers and their employers from a barrage of potential lawsuits. Accordingly, MACo requests the Committee give SB 311 a **FAVORABLE** report.

# **SB311\_Health Care Heroes Protection Act\_Support.pd**

Uploaded by: Taylor, Allison

Position: FAV



Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc  
2101 East Jefferson Street  
Rockville, Maryland 20852

February 2, 2021

The Honorable William C. Smith, Jr.  
Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
11 Bladen Street  
Annapolis, Maryland 21401

**RE: SB 311 – Support**

Dear Chair Smith and Members of the Committee:

Kaiser Permanente strongly supports SB 311, “Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act).”

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and DC.<sup>1</sup> Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for approximately 775,000 members. In Maryland, we deliver care to over 450,000 members.

The health care practitioners at Kaiser Permanente have risen to meet the challenges presented by the COVID-19 pandemic. We have instituted new safety protocols and greatly expanded telehealth services, including video, audio, and secure messaging, while also continuing to make health care services available in person for members who need them. Despite our collective good faith and exhaustive efforts to meet the needs of our state and community, facing environmental factors that are outside of our control, we have seen a marked increase among the legal community discussing and advertising the possibility of tort litigation to take advantage of the circumstances of the crisis.

This legislation would ensure that those serving Marylanders during a crisis are protected from undue litigation. We ask that Maryland join the other 28 states and the District of Columbia, which have all passed laws and/or issued executive orders to grant liability protections for health care facilities and providers. To that end, we urge a favorable report for SB 311.

Thank you for the opportunity to comment. Please feel free to contact Allison Taylor at [Allison.W.Taylor@kp.org](mailto:Allison.W.Taylor@kp.org) or (202) 924-7496 with questions.

Sincerely,

A handwritten signature in cursive script that reads "Allison Taylor".

Allison Taylor  
Director of Government Relations  
Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.

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<sup>1</sup> Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation’s largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente’s members.

**SB0311\_FAV\_MedChi, MACHC, MDACEP, LifeSpan, MDAAP,**

Uploaded by: Wise, Steve

Position: FAV



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Maryland Chapter  
AMERICAN COLLEGE OF  
EMERGENCY PHYSICIANS



Maryland Association of  
Resources for Families & Youth

TO: The Honorable William C. Smith, Jr., Chair  
Members, Senate Judicial Proceedings Committee  
The Honorable Shelly Hettleman

FROM: J. Steven Wise  
Pamela Metz Kasemeyer  
Danna L. Kauffman

DATE: February 2, 2021

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

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, the Maryland Chapter of the American Academy of Pediatrics, the Mid-Atlantic Association of Community Health Centers, the LifeSpan Network, and the Maryland Association of Resources for Families & Youth, we submit this letter of **support** for **Senate Bill 311**.

Senate Bill 311 makes important changes to the statute governing the Governor’s Health Emergency Powers (Title 14, Subtitle 3a of the Public Safety Article). First, it expands the definition of health care provider under this section of the law to include an employee, agent or contractor of a health care facility who provides or assists with the delivery of health care. Second, it amends existing law governing civil and criminal immunity for those health care providers who provide or assist in providing health care related to the health care emergency declared by the Governor, and who have acted in good faith. It also clarifies that this immunity extends to acts directly or indirectly related to the Governor’s proclamation. Finally, it provides that immunity determinations under this section of the law are immediately appealable.

Health care providers and facilities have for every minute of every day of every week for almost a year, responded to the overwhelming flood of patients suffering from COVID-19. They have faced the risks that come with this response, and fought through fatigue, staffing shortages, supply shortages, and ever-changing health care orders and directives governing their daily procedures. At the same time, the flow of patients seeking needed care for other ailments or injuries did not cease, though the pace did slow due to patient fears of becoming infected with COVID and due to orders ceasing elective procedures and other non-urgent visits. The tumult has revealed legal vulnerabilities for providers and facilities alike that Senate Bill 311 seeks to address.

The Maryland Department of Health’s Orders have stated that the immunity provisions of the existing law do not “apply to a healthcare provider or facility performing non-COVID-19 related procedures or appointments.” This limits the scope of the immunity protections provided by the existing statute and sets up a distinction among patients that in the daily reality of a pandemic does not exist. The pandemic affected all patients, providers and facilities, even non-COVID patients who perhaps needed to visit to a physician, undergo a procedure, or obtain needed medical equipment that were not available due to reasons that *were* COVID related. There were supply



and personnel shortages and other factors present that affected everyone, not just COVID-19 patients. This artificial divide among patients is not what was intended by the General Assembly in our view and needs to be addressed in the manner set forth in Senate Bill 311.

Health care providers and facilities have done their absolute best during this difficult time. They have, as the bill requires, acted in good faith. They deserve protection from lawsuits that might arise during the pandemic and be brought in the years that follow. And to be clear, where providers and facilities have been shown not to have acted in good faith, nothing in Senate Bill 311 precludes an appropriate lawsuit. But we cannot have these health care heroes emerge from the herculean efforts they have extended over the last year and are still extending today, only to face lawsuits that are unwarranted under these tragic circumstances.

For these reasons, all of the above organizations ask for your support of Senate Bill 311.

**For more information call:**

Schwartz, Metz, & Wise, P.A.

410-244-7000

**SB 311.FWA.MACS.pdf**

Uploaded by: Kallins, Lauren

Position: FWA

## Board of Directors

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**Laura Howell,**  
Executive Director

## Senate Finance Committee SB 311: Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity (Maryland Health Care Heroes Protection Act)

**Position: Support with Amendment**  
February 2, 2021

The Maryland Association of Community Services (MACS) is a non-profit association of over 100 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities.

**Current law already includes DDA-licensed *group home* providers within the definition of health care providers who may be eligible for civil and criminal immunity during a Catastrophic Health Emergency. However, by only covering a subset of services offered by DDA-licensed providers, many providers only have protection for *part* of the services they offer, and not for others. MACS respectfully seeks an amendment to include *all* DDA-licensed community providers and services.**

Health and safety is central to the core mission of enabling people with intellectual and developmental disabilities (IDD) to live meaningful, inclusive lives in their communities. For this reason, *all* DDA-licensed community service providers-- those that provide supports to people in group homes and those that provide services in people's homes and day supports (often the same provider)-- are highly regulated with regard to health, safety and emergency protocols as part of the regular licensing process. Providers have made heroic efforts to protect the people they support and their staff by complying with a changing array of federal, state and local guidelines with regard to COVID-19, regardless of the service they are providing.

While providers are often offering the same types of support (e.g. medication management and personal supports) across various services authorized by DDA, only the group home providers are eligible for immunity. Further highlighting the inconsistency in the current definition is the fact that most providers licensed to provide group home supports are also licensed to provide many other types of services, including in-home supports and day supports—yet only claims related to their group home services would be eligible for immunity.

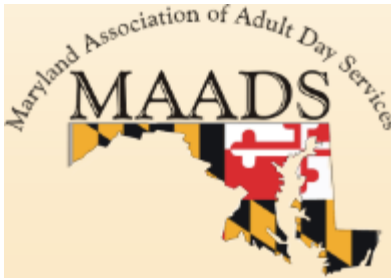
We respectfully seek an amendment that would correct this discrepancy and include *all* DDA-licensed community providers within the definition of health care provider pursuant to §14-3A-01(e).

Respectfully submitted:  
Lauren Kallins  
LKallins@macsonline.org

# **SB0311\_FWA\_MAADS - Catastrophic Health Emergencies**

Uploaded by: Kauffman, Danna

Position: FWA



Managed by LifeSpan

TO: The Honorable William C. Smith, Jr., Chair  
Members, Senate Judicial Proceedings Committee  
The Honorable Shelly Hettleman

FROM: Danna L. Kauffman  
Pamela Metz Kasemeyer

DATE: February 2, 2021

RE: **SUPPORT WITH AN AMENDMENT** – Senate Bill 311 – *Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity (Maryland Health Care Heroes Protection Act)*

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On behalf of the Maryland Association of Adult Day Services (MAADS), a provider association representing medical adult day care centers throughout Maryland, we respectfully support the passage of Senate Bill 311 with an amendment to include medical adult day care centers.

Throughout the COVID-19 pandemic, the Maryland Department of Health has required medical adult day care centers to provide remote services to clients through phone calls to monitor their health status and avoid potential declines. Medical adult day care services continue to provide this service and hope to reopen their centers and provide direct care under the requirements imposed on them by the State. Given that the federal HHS has stated that the public health emergency declaration will most likely extend through 2021, centers should be afforded the same protections provided to other health care facilities throughout this pandemic. **Therefore, on behalf of our members, MAADS respectfully requests that Senate Bill 311 be amended to include medical adult day centers.** Thank you.

**For more information call:**

Danna L. Kauffman  
Pamela Metz Kasemeyer  
410-244-7000

# **SB0311\_FWA\_MNCHA - Catastrophic Health Emergencies**

Uploaded by: Kauffman, Danna

Position: FWA



## Maryland-National Capital Homecare Association

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

Senate Judicial Proceedings Committee

February 2, 2021

### **Position: SUPPORT WITH AMENDMENT**

On behalf of the Maryland-National Capital Homecare Association (MNCHA), whose members include Medicare-certified home health agencies, private duty companies and durable medical equipment suppliers across the State, we support Senate Bill 311 with an amendment.

Unfortunately, because the bill defines “health care facility” as a facility under §19-114 of the Health-General Article, residential service agencies (defined under §19-4A-01 of the Health-General Article) have been inadvertently omitted from the bill’s protections. However, they have been on the front lines, providing care to individuals in their home. Often, their services have been more sought after to avoid other congregate settings. Like others, they have struggled to secure necessary personal protective equipment, provide hero’s pay, and comply with applicable requirements, often with little or no clear guidance from the State and/or local governments. Consequently, they deserve the same protection afforded to other health care facilities under this bill. **Therefore, we respectfully request that the bill be amended to include residential service agencies.** With this amendment, we urge a favorable vote.

### **For More Information:**

Dawn Seek  
Executive Director  
Maryland-National Capital Homecare Association  
Office: 410-980-6135

Danna Kauffman  
Schwartz, Metz and Wise, P.A.  
dkauffman@smwpa.com  
410-294-7759

# **SB 311 Catastrophic Health Emergencies - Health Ca**

Uploaded by: Bresnahan, Tammy

Position: UNF





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1-866-542-8163 | Fax: 410-895-0269 | TTY: 1-877-434-7598  
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**SB 311 Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity**  
**Senate Judicial Proceedings Committee**  
**Unfavorable**  
**February 2, 2021**

Good afternoon Chairman Smith and members of the Senate Judicial Proceedings Committee. My name is Tammy Bresnahan. I am the Director of Advocacy for AARP MD. AARP Maryland, on behalf of our over 850,000 members and all older Marylanders, are sharing our strong opposition to **SB 311 Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity**. AARP has long fought for the rights of residents in nursing homes and other residential care facilities to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and assisted living play an important role in America's long-term care services and supports system. There are about 300 nursing homes and over 1400 assisted living facilities in Maryland. During this time of a pandemic, nursing homes, assisted living facilities and other health care facilities face unprecedented challenges, and tragically, in Maryland over 3100 residents and staff have lost their lives in long term care. While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Given that most inspections of nursing homes were suspended, family in-person visits were and are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits were restricted, there have been fewer eyes observing what is happening in these facilities. Residents of nursing homes and assisted living were and unable to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Pursuing neglect or abuse in long term care in court is not easy to do. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

AARP  
Real Possibilities

Maryland should not strip away the rights and protections of residents. Nursing homes and other health care facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP MD appreciates your consideration of these views and respectfully urges you to reject **SB 311 Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity**. Families all across Maryland are looking to you to protect the health and safety of their loved ones living in long term care. If you have questions, please feel free to contact Tammy Bresnahan [tbresnahan@aarp.org](mailto:tbresnahan@aarp.org) or by calling 410-302-8451.

# **MaCCRA - Unfavorable - Senate Bill 311 - Catastrop**

Uploaded by: Brocato, Barbara

Position: UNF



**Maryland Continuing Care Residents Association Protecting  
the Future of Continuing Care Residents The Voice of  
Continuing Care Residents at Annapolis**

**SUBJECT:** Senate Bill 311 - Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity (Maryland Health Care Heroes Protection Act)  
**COMMITTEES:** Senate Judicial Proceedings Committee  
The Honorable Will Smith, Chair  
**DATE:** Tuesday, February 2, 2021  
**POSITION:** **UNFAVORABLE**

The **Maryland Continuing Care Residents Association (MaCCRA)** is a not-for-profit organization representing the residents in continuing care retirement communities (CCRCs). Maryland has over 18,000 older adults living in CCRCs. The principal purpose of MaCCRA is to protect and enhance the rights and financial security of current and future residents while maintaining the viability of the providers whose interests are frequently the same as their residents. MaCCRA SUPPORTS efforts to:

- Enhance: Transparency, Accountability, Financial Security; and
- Preserve existing protections in law and regulation for current and future CCRC residents statewide.

**On behalf of the Maryland Continuing Care Residents Association, we offer the following comments and concerns in opposition to Senate Bill 311.** As drafted, Senate Bill 311 *"alters the definition of "health care provider" for purposes of certain provisions of law governing catastrophic health emergencies to include an employee, an agent, or a contractor of a health care facility who provides or assists in the provision of health care services; specifies the acts and omissions for which and altering the circumstances under which a health care provider has civil and criminal immunity related to a catastrophic health emergency; and applies the Act retroactively."*

MaCCRA and its members are very sympathetic to CCRC managers and front-line care and service workers as they labor during the coronavirus pandemic with its many challenges. However, residents who have been living and dying, many times alone, in nursing homes or assisted living apartments, should not be deprived of their legal rights or protections even in these most extraordinary times.

Many CCRC operators and managers have developed strong relationships with their residents both in independent living and in the care centers of the communities. They communicate factual information about what is happening, collaborate with the resident leadership, and have developed trust with the people they serve, including family members. That type of management limits their risk for lawsuits.

We are grateful for the actions that providers have taken to keep us safe and in a bubble. As the months have gone on, we have discovered no matter what restrictions are in place, asymptomatic staff and residents can expose us to the virus with the resulting consequences. Negligence is not an issue here if all the guidance from CDC and MDH is followed. We oppose legislation that limits liability for settings caring for older adults.

For these reasons we ask for an unfavorable report on Senate Bill 311.

**For further information please contact: Brocato & Shattuck at (410) 269-1503 or [barbara@bmbassoc.com](mailto:barbara@bmbassoc.com)**

# **MD Judiciary - Testimony SB 311.pdf**

Uploaded by: Elalamy, Sara

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 311  
Catastrophic Health Emergencies – Health Care Providers –  
Definition and Immunity  
**DATE:** January 20, 2021  
(2/2)  
**POSITION:** Oppose, as drafted

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The Maryland Judiciary opposes Senate Bill 311, as drafted. The bill provides health care providers immunity from civil or criminal liability for any act or omission committed in furtherance of providing or assisting in the provision of health care services resulting from a catastrophic health emergency proclamation, if the health care provider committed the act or omission in good faith, and the act or omission was committed during a catastrophic health emergency or within 180 days after the termination of the catastrophic health emergency. The bill covers any act or omission that is directly or indirectly related to the catastrophic emergency proclamation.

Although the Judiciary has no position on the policy aims of this legislation, the Judiciary is concerned with the bill's statement, at § 14-3A-06(c), that a grant or denial or a motion to apply immunity "shall be immediately appealable." This provision could create some confusion, especially if a motion to apply immunity is granted, because a dismissed case typically would already be appealable under applicable Maryland Rules. The Judiciary believes that this provision in the bill, and particularly the inclusion of the word "immediately", should be reviewed to ensure more clarity.

Finally, the uncodified section two on page two presents ex post facto problems as it appears to eliminate immunity people enjoyed at the time of action.

cc. Hon. Shelly Hettleman  
Judicial Council  
Legislative Committee  
Kelley O'Connor

**SB 311 OPPOSE AAUW MD.pdf**

Uploaded by: King, Roxann

Position: UNF



**Testimony of American Association of University Women Maryland**

to the

**Maryland General Assembly  
Senate Judicial Proceedings Committee**

opposing

**Senate Bill 311: Catastrophic Health Emergencies-Health Care Providers-Definition and Immunity**

February 2, 2021

The American Association of University Women Maryland (AAUW Maryland) opposes Senate Bill 311: “Catastrophic Health Emergencies-Health Care Providers-Definition and Immunity” (SB 311). SB 311 would expand corporate immunity in healthcare that will make us all less safe.

Founded in 1881, AAUW’s approximately 170,000 members and 1,000 branches nationwide are leaders in gender equity research, advocacy, and philanthropy. In Maryland, we have over 4,000 members and supporters and 13 college and university partners.

AAUW Maryland believes that everyone is entitled to high-quality, affordable, and accessible health care, especially during public health emergencies. But SB 311 would immunize businesses from liability even when they caused COVID-related illness or death by failing to take reasonable steps to keep people safe. Furthermore, immunizing business from accountability to workers, patients and consumers would encourage businesses to be careless with public health and safety. If businesses know that they do not have to worry about government enforcement or the possibility of lawsuits, they are far less incentive to make changes needed to keep people safe.

Furthermore, the immunity provision is so broad it could be read to cover almost any act or omission, not just malpractice that causes patient harm or death, but also failure to provide safe workplaces for their employees that results in harming front line health care workers. How can Maryland justify stripping protections from the real front line heroes such as doctors, nurses, and first responders to protect the corporate entities that employ them when they fail to provide safe workplaces (for example not providing personal protective equipment)?

The goal of SB 311 is not to protect businesses from frivolous claims. Frivolous claims are already dismissed through our current legal system. The goal of SB 311 is to make it impossible for individuals, patients or workers, from bringing meritorious claims of negligence by corporate health care providers. AAUW Maryland opposes this bad faith attempt to use a national pandemic as a vehicle for corporately backed “tort reform” legislation that would deny Maryland consumers and front line emergency workers their day in court when they have meritorious claims against health care providers. Please view the congressional testimony from Public Citizen about the danger of passing this kind of law during a pandemic using this link:

<https://www.citizen.org/article/congressional-testimony-on-liability-laws-during-the-covid-19-pandemic/>

Please protect Maryland patients and oppose SB 311. For more information, please contact Erin Prangle, President, AAUW Maryland, at [erin.prangle@gmail.com](mailto:erin.prangle@gmail.com).



**SB0311\_Oppose\_\_Attorney General.pdf**

Uploaded by: O'Connor, Patricia

Position: UNF

**BRIAN E. FROSH**  
*Attorney General*



**ELIZABETH F. HARRIS**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

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WRITER'S DIRECT DIAL NO.  
(410) 576-6515

February 2, 2021

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: The Office of the Attorney General

Re: Senate Bill 311 (Health Care Heroes Protection Act): Opposition

The Office of the Attorney General (the Office) opposes Senate Bill 311. The bill would alter current law to retroactively provide immunity for an expanded class of acts or omissions committed by an expanded class of healthcare providers, and extend immunity for six months after the catastrophic health emergency ends. This Office regards the proposed expansion and extension of immunity as unjustifiable and likely to increase the harms Marylanders are suffering during the ongoing pandemic with disproportionate impact on those in low income and communities of color, whose vulnerabilities are documented in the Attorney General's COVID-19 Access to Justice Task Force report. <https://www.marylandattorneygeneral.gov/Pages/A2JC/default.aspx>

Current law provides that “[a] healthcare provider is immune from civil or criminal liability if the healthcare provider acts in good faith under a catastrophic health emergency proclamation.” Md. Code Ann., Public Safety § 14-3A-06. This Office considers the immunity to be limited to health care providers who are required to act under an order of the Governor or the Secretary or are working to fulfill a requirement of the order. *See* 100 Md. Op. Atty. Gen. 160, December 28, 2015 (“A health care provider who acts in accordance with State-required [ventilator] allocation criteria will thus almost by definition be acting in good faith, regardless of the negative consequences arising from the withdrawal of a patient’s ventilator”). Orders issued by the Secretary of Health throughout the pandemic have 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.” Granting broad immunity beyond this narrow band of existing immunity, as proposed in the bill, could protect acts or omissions that should not be immune from liability.

Harmful or ineffective products continue to be marketed and sold as Covid-19 cures or preventatives, and Marylanders require protection or recompense from health care providers directly or indirectly involved in these scams. As reported by USA Today in a September 3, 2020 article entitled “We’re not your slaves!: Alternative health providers bristle at warning letters about their coronavirus treatments” (sections omitted):

Since the onset of the pandemic seven months ago, the FDA and the FTC have sent out an average of 13 letters a week warning companies and individuals to stop making false claims about their ability to prevent or cure COVID-19.

“The healthcare system in this country is rigged against inexpensive, safe, and effective natural remedies in favor of expensive pharmaceutical drugs,” said Clark Hansen, a naturopathic medical doctor in Arizona, in an email message to USA TODAY. “The US medical system is ignoring any treatment that is not patentable and therefore cannot provide a multi-billion profit for some giant healthcare company.”

The [FTC warned Hansen](#) in May to stop implying that a combination of elderberry, echinacea and the herb andrographis could prevent coronavirus infection.

Many of the recipients have a history of fraud and malfeasance. They include televangelist Jim Bakker, who spent five years in prison for defrauding his own ministry back in the 1980s; Gordon Pedersen, who wears a lab coat and stethoscope and calls himself a doctor even though he holds no medical degree; and Matthew Martinez, who agreed to give up his chiropractor's license in 2016 after being accused of having sex with clients and suggesting that a patient with multiple sclerosis could be cured by drinking breast milk.

Both [Bakker](#) and [Pedersen](#) told their followers that Silver Solution was the antidote to COVID-19 and were sued by the government for failing to address allegedly false claims outlined in warning letters.

<https://www.usatoday.com/story/news/investigations/2020/09/03/government-coronavirus-crackdown-angers-alternative-health-providers/5660997002/>

Current law permits the Attorney General and the Consumer Protection Division to protect Marylanders from physical and financial harms resulting from non-immune acts or omissions by health care providers. We urgently seek to continue this work on behalf of Marylanders, because we expect the risk of potential harms to continue if not worsen, based on events here and in other states. See <https://ag.ny.gov/press->

[release/2021/attorney-general-james-releases-report-nursing-homes-response-covid-19](#)  
and <https://www.healthaffairs.org/doi/10.1377/hblog20200504.459546/full/>

The report of the New York Attorney General illustrates some of the problems that a misguided attempt to provide immunity can create, leading the New York Attorney General to urge repeal of immunity that could put vulnerable seniors at risk.

We urge the Committee to give Senate Bill 311 an unfavorable report.

cc: Sponsor

# **SB311\_OPPOSE\_Marylanders for Patient Rights.pdf**

Uploaded by: Palmisano, Anna

Position: UNF

# *Marylanders for Patient Rights*

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## **MARYLANDERS FOR PATIENT RIGHTS OPPOSES SB311**

January 29, 2021

Chair William C. Smith  
Senate Judicial Proceedings Committee  
Miller Senate Office Building, 2 East Wing  
11 Bladen St., Annapolis, MD 21401

Dear Chair Smith,

On behalf of Marylanders for Patient Rights, a patient advocacy organization, I am writing to strongly **OPPOSE SB311**, a bill which threatens to undermine the rights of Maryland hospital patients. The 2019 Patient's Bill of Rights was supported by 24 advocacy groups, passed the MGA unanimously, and was signed into law by the Governor. SB311 threatens to undermine those patient rights by denying patients legal recourse for egregious medical errors, patient dumping, or discrimination against vulnerable patients and minorities.

SB311 greatly expands the number of hospital employees who would receive blanket immunity to civil and criminal liability during a health emergency. Moreover, the immunity would be in effect not only during a health emergency, but also for an additional 180 days *afterwards*, which is totally unjustified. Without civil or criminal liability, there would be no consequences for hospital "employees, agents, or contractors" failing to provide patients with safe, respectful, and informed healthcare during and six months after the end of a crisis.

By removing accountability, SB311 poses risks to hospital patients in increasing medical errors (the third leading cause of deaths in the USA), threatening patient safety, and allowing for implicit bias and discrimination. SB311 is ill-conceived and has the potential for grievous harm against vulnerable patients, including those who are elderly or disabled.

Maryland hospitals have remained among the worst (47<sup>th</sup> out of 50 states) in the USA in hospital patient satisfaction for the past five years, based on surveys by the Centers for Medicare and Medicaid Services in the Oct. 2020 Hospital Consumer Assessment of Health Care Providers. This is shameful. SB311 basically allows hospitals to avoid implementing the patient rights law during and six months after the COVID pandemic and other emergencies, when patients need those rights more than ever. **Please OPPOSE SB311 and protect Maryland hospital patients.**

Sincerely,  
*Anna Palmisano*  
Anna Palmisano, Ph.D.,  
Marylanders for Patient Rights  
palmscience@verizon.net

# **SB 311, HC Facility Immunity - Written Testimony.p**

Uploaded by: Shea, Casey

Position: UNF



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1500 Union Ave., Suite 2000, Baltimore, MD 21211

Phone: 410-727-6352 | Fax: 410-727-6389

[www.DisabilityRightsMD.org](http://www.DisabilityRightsMD.org)

**SENATE JUDICIARY COMMITTEE**

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

**FEBRUARY 2, 2021**

**POSITION: OPPOSE**

Thank you for the opportunity to provide testimony on Senate Bill 311: Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act). Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the federally designated Protection and Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to advocate that Marylanders with disabilities are free from abuse, neglect and other rights violations; integrated in their communities; and are supported to live independently and access quality, affordable health care.

This bill would give health care facility employees, agents, and contractors both criminal and civil immunity from accountability for actions and omissions that violate patients' rights during the public health emergency currently in effect and for six months afterwards. This bill goes even further and provides immunity for actions or omissions that are directly *or indirectly* related to the public health emergency. This shield is a dangerous proposal for people with disabilities in health care facilities because it provides no consequences for substandard care such as medical error, patient dumping, or other rights violations including health care rationing and discrimination against people with disabilities and people of color.

Immunity for bad actors sanctions harmful behavior. But liability for substandard care incentivizes facilities to comply with laws and regulations, including the Americans with Disabilities Act and the 2019 Maryland Patient's Bill of Rights, particularly at for-profit institutions. It is especially critical that these facilities do not have carte blanche authority when people with disabilities who currently have little to no protections but the justice system face grievous rights violations. People with disabilities already face visitation restrictions in health care facilities during the public health emergency that may limit their ability to get the support needed to help prevent such bad actions.

Further, immunity places workers and other patients at risk. When health care facilities do not need to comply with reasonable standards, workers and other patients face hazards and increased risks of injury and COVID-19 infection. This proposed legislation undermines the rights of patients with disabilities to safe, respectful, and informed health care during a crisis.

**For these reasons, DRM opposes Senate Bill 311.**

Respectfully,

Casey Shea, Esq.  
Disability Rights Maryland  
Direct: 443-692-2477  
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# **MAJ Fact Sheet 2021 -- Existing Medmal Liability P**

Uploaded by: Tolley, George

Position: UNF



# Maryland Association for Justice, Inc.

## 2021 Fact Sheet

### EXISTING LIABILITY PROTECTIONS FOR MARYLAND HEALTH CARE PROVIDERS

Over the past half century, Maryland health care providers have accumulated a very robust set of liability protections. These laws are collected in the Courts and Judicial Proceedings Article (CJ).

**Pre-Suit Administrative Proceeding.** Every claim against a health care provider is first filed in the Health Care Alternative Dispute Resolution Office (HCADRO). To get out of HCADRO, the plaintiff must file a Certificate of Qualified Expert and Report (CQE). CJ § 3-2A-04(b).

To sign a CQE, the “qualified expert” must be a health care provider. Therefore, every medical negligence claim that gets out of HCADRO has the support of a qualified health care provider.

Under current Maryland law, therefore, health care providers – not lawyers – already control which claims may proceed to court, and which claims never get past square one.

**Rigorous Qualification Requirements for Expert Witnesses.** To be “qualified” in a given case, a health care provider must satisfy *all* of these requirements:

- clinical or teaching experience in the defendant’s specialty (or a related specialty) within 5 years of the time when the claim arose,
- Board-certified in the defendant’s specialty (or a related specialty),
- and devote less than 25% of professional activities to testimony.

Failure of the certifying expert to satisfy any of these requirements subjects a case to *summary dismissal*.

**Pre-Suit Certification of Meritorious Claim.** In addition, the expert’s CQE must satisfy *all* of the following requirements:

- attest that the defendant deviated from the applicable standard of care,
  - “Applicable standard of care” means those standards of practice among members of the same health care profession with similar training and experience, practicing under the same or similar circumstances, at the time of the acts or omissions giving rise to the cause of action. *See* CJ § 3-2A-02(c).
  - By definition, the “applicable standard of care” takes into account all of the circumstances affecting the health care at issue. This includes the availability of equipment (*e.g.*, x-ray v. CT v. MRI), specialized health care provider consultants (pediatric neuro-ophthalmologists, neurological surgeons, *etc.*), as well as the existence of an ongoing global catastrophic health emergency.
    - In other words, the law automatically takes into account special exigencies, including the pandemic, in deciding whether care was appropriate or not.
- and attest that the deviation from the standard of care was a proximate cause of the plaintiff’s injury,
- and provide sufficient additional detail to allow the parties and the court to understand the expert’s opinions.

Failure of the CQE to satisfy any of these requirements subjects a case to *summary dismissal*.



# Maryland Association for Justice, Inc.

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Because of these very robust pre-suit liability protections, Maryland ordinarily does not have any problem with so-called “frivolous” medical negligence lawsuits. The hospitals and Medical Mutual have admitted all of this for years in their testimony in Annapolis. Moreover, the number of medical negligence claims filed in HCADRO has decreased in recent years.

**Existing Immunity Under Catastrophic Health Emergency Proclamations.** Under existing Maryland law, health care providers have immunity from civil and criminal liability when they act “in good faith under a catastrophic health emergency proclamation.” Md. Pub. Safety § 14-3A-06.

**Daubert Standard.** Health care providers recently secured a victory when the Court of Appeals adopted the Daubert standard for evaluating the admissibility of expert testimony in August of 2020. The Daubert standard strongly favors parties in litigation with greater financial resources.

**Statute of Limitations.** Maryland law also has a special statute of limitations just for negligent health care providers. Md. CJ 5-109. Claims must be filed within three years of discovery of the injury, or within five years of when the injury was committed, whichever is shorter.

Maryland law also includes special limitations on the damages that plaintiffs can recover from negligent health care provider defendants.

**Collateral sources.** When a plaintiff is injured by negligence, the general rule is that a defendant cannot use the fact that the plaintiff’s health care expenses were paid, *e.g.*, by the plaintiff’s own health insurance, to reduce their own liability. This rule is called the “collateral source rule,” because the law will not allow a defendant to benefit from benefits that the plaintiff obtained from sources other than (collateral to) the defendant.

In medical negligence cases *only*, the General Assembly abrogated the collateral source rule. Md. CJ § 3-2A-09(d). After trial – *i.e.*, *after* the health care provider defendant has been found negligent by a jury – the judgment will be reduced to account for the plaintiff’s collateral benefits.

**Non-economic damages.** Maryland law caps the recoverable non-economic damages in actions for personal injury and/or wrongful death. Md. CJ § 11-108.

In medical negligence actions *only*, a special, lower cap applies. Md. CJ § 3-2A-09. The grieving families of victims of medical negligence share *less than half* the compensation allowed by law for their anguish and pain than victims’ families can recover from every other kind of negligent defendant.

January 2021	Personal Injury	Wrongful Death
Medical Negligence	\$ 845,000.00	\$ 1,056,250.00
Everyone Else	\$ 890,000.00	\$ 2,225,000.00

For more than a half century, Maryland’s health care providers have accumulated a vast array of special liability protections, which make it easier for health care providers to avoid responsibility for the consequences of malpractice. In contrast, *not one single statute* in the entire Maryland Annotated Code makes it *easier* for victims of malpractice to get justice.

# **MAJ Position Paper -- 2021 SB 311 -- Health Care I**

Uploaded by: Tolley, George

Position: UNF



# Maryland Association for Justice, Inc.

## 2021 Position Paper

### Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity SB 311 – 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).

SB 311 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 SB 311.**

# **MAJ Position Paper -- 2021 SB 311 -- No COVID Liti**

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# Maryland Association for Justice, Inc.

## 2021 Position Paper

### Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity SB 311 – UNFAVORABLE

SB 311 represents an unprecedented – and intolerable – expansion of the already broad immunity that Maryland health care providers currently enjoy during the current catastrophic health emergency.

Hospitals claim that they just want to give their employees peace of mind, but what they really want is immunity from liability for absolutely everything:

Your hospitals and health care heroes must not be distracted by the threat of litigation as you treat patients – *all* patients, not just COVID patients – under these extraordinary conditions.<sup>1</sup>

When MAJ suggested a possible alternative that would allow all health care personnel working in hospitals to avoid being named as defendants in litigation for as long as the current catastrophic health emergency continues, MHA turned us down flat.

Even after a year of pandemic, with hundreds of thousands of Americans dead from COVID-19, health care providers are not seeing a large number of lawsuits. According to a “COVID-19 Complaint Tracker” maintained by Hunton Andrews Kurth, an international law firm (<https://www.huntonak.com/en/covid-19-tracker.html>), Maryland hasn’t had a single COVID-related malpractice lawsuit, and just two lawsuits arising from COVID transmission (or fear of transmission): one (1) wrongful death case<sup>2</sup> and one (1) employment case filed by a physician against the University of Maryland Medical System.<sup>3</sup>

There is no rational fear of litigation arising from the COVID-19 pandemic, and no need to expand immunity for health care providers, so that they can avoid all responsibility for the consequences of unreasonably unsafe medical care.

**The Maryland Association for Justice respectfully requests  
an UNFAVORABLE report on SB 311.**

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<sup>1</sup> Letter from Bob Atlas, Executive Director of Maryland Hospital Association (Nov. 1, 2020) (emphasis in original), available online at: <https://myemail.constantcontact.com/MHA-Toward-Better-Health-Newsletter---Protecting-Our-Health-Care-Heroes.html?soid=1102624068989&aid=zHQmMC5JrPw> (“MHA intends to leverage the remarkable goodwill your hospitals and employees have gained as we advocate for [expanded immunity protection]”).

<sup>2</sup> *Sivels v. Future Care Cherrywood*, Case No. 03-cv-21-00019 (Cir. Ct. Baltimore County).

<sup>3</sup> *Grundmann v. UMMS*, Case No. 1:20-cv-2010 (D. Md.) (defendant allegedly refused to make reasonable accommodations for plaintiff’s immunocompromised status during COVID-19 pandemic).

# **MAJ Position Paper -- 2021 SB 311 -- Worse Than Bi**

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# Maryland Association for Justice, Inc.

## 2021 Position Paper

### Catastrophic Health Emergencies – Health Care Providers – Definition and Immunity SB 311 – UNFAVORABLE

For close to twenty years, Maryland’s hospitals sought “Birth Injury Fund” legislation, which would prospectively grant immunity from liability in cases of obstetrical malpractice in exchange for an unfair, unsustainable, and unconstitutional “no-fault” compensation scheme.

The Maryland General Assembly never, ever, gave Birth Injury Funds a favorable vote. Birth Injury Fund bills died year after year – either with an UNFAVORABLE vote, or without any vote at all. Finally, it appears, MHA has gotten the message.

This year, Maryland’s hospitals are not proposing a Birth Injury Fund. Their substitute bill, SB 311, is *even worse*: it retroactively and unconstitutionally impairs the vested rights of the victims of unreasonably unsafe medical care *without offering any compensation at all*.

SB 311 seeks to expand the current immunity that hospitals and health care providers enjoy under § 14-3A-06. This already existing immunity in § 14-3A-06 has been described by medical and legal commentators as among the “most broad immunity-conferring legislation currently in effect” in the United States.<sup>1</sup> SB 311 would expand immunity to cover all health care, whether or not it is COVID-related.

Birth Injury Funds were bad. SB 311 is worse.

SB 311 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 immunity, and victims of unreasonably unsafe medical care do not deserve to have their rights stripped away by over-reaching legislation.

Maryland health care providers already enjoy robust liability protections. From pre-suit certification requirements to special expert witness qualifications to lower caps on damages – Maryland health care providers are well protected from liability, which is why malpractice insurance in Maryland is much less expensive now than it was fifteen years ago.

**The Maryland Association for Justice respectfully requests  
an UNFAVORABLE report on SB 311.**

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<sup>1</sup> 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).

# **MAJ Position Paper 2021 - Retroactive Immunity Unc**

Uploaded by: Tolley, George

Position: UNF



# Maryland Association for Justice, Inc.

## 2021 Position Paper

### COVID-19 Claim – Civil Immunity SB 311 – UNFAVORABLE

#### LEGISLATION THAT RETROACTIVELY IMPAIRS, INTERFERES WITH, OR ABOLISHES A RIGHT VESTED IN AN ACCRUED CAUSE OF ACTION IS UNCONSTITUTIONAL

SB311 ignores this ancient constitutional principle, and would abrogate vested rights of victims of unreasonably unsafe conduct *retroactively* to March 5, 2020. As such, SB 311 violates the Maryland Constitution and the Declaration of Rights, and would be unconstitutional.

#### **The Maryland Association for Justice respectfully requests an UNFAVORABLE report on SB 311.**

SB311 would create a new, broader, and more expansive statutory immunity, retroactive to March 5, 2020, for health care providers and their employees, agents, and contractors. This new, broader statutory immunity would shield such persons from liability for their unreasonably unsafe conduct “in the provision of health care services resulting from a catastrophic health emergency occurring on or after March 5, 2020.” SB 311, at page 2, lines 27-31.

The proponents of SB 311 have been clear – they want immunity from liability with respect to all health care by all health care providers, their agents, employees, and contractors, to all patients (not just COVID patients). The immunity in SB 311 is new, broader, and much more onerous than the currently existing immunity in Md. Pub. Safety Code Ann. § 14-3A-06.

By definition, negligence claims precluded by the new, broader, and more expansive immunity that SB 311 seeks to create would include causes of action accruing on or after March 5, 2020. Accordingly, SB 311 would *retroactively* impair, interfere with, and/or abolish vested rights to maintain an accrued common law cause of action for negligence, and is unconstitutional under longstanding Court of Appeals precedent for that reason.

#### **Md. Declaration of Rights, Article 19. Relief for injury to person or property**

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

#### **Md. Declaration of Rights, Article 24. Due process**

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.



# Maryland Association for Justice, Inc.

## 2021 Position Paper

### Definition of Vested Right

A vested right, as that term is used in relation to constitutional guarantees, implies an interest which it is proper for the state to recognize and protect, and of which the individual may not be deprived arbitrarily without injustice. *Langston v. Riffe*, 359 Md. 396, 420 (2000).

### An Accrued Cause of Action is a Vested Right

A cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631, 636 (1981).

There is a vested right in an accrued cause of action and the Maryland Constitution precludes the impairment of such right. Furthermore, this principle applies to both common law and statutory causes of action. *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 633 (2002).

### *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002).

The *Dua* case arose from two separate and consolidated appeals regarding retroactive statutes, one of which retroactively established subrogation rights for HMO's, and the other which retroactively changed the law applicable to late fee charges by cable TV providers. The Court of Appeals conducted an detailed and exhaustive analysis of the constitutionality of the two legislative acts which, it held, were unconstitutional because they retroactively impaired, interfered with, or abolished accrued causes of action and deprived plaintiffs of vested rights.

In *Dua*, the Court of Appeals reviewed and or cited roughly 40 of its own prior decisions, spanning more than 180 years of consistent jurisprudence, to conclude that retroactive legislation is unconstitutional if it impairs vested rights. In addition to those Maryland cases, the Court of Appeals approvingly cited and adopted similar holdings in cases from other States.

The Court's description of the holding in *Gibson v. Commonwealth of Pennsylvania*, 490 Pa. 156, 160-162, 415 A.2d 80, 83-84 (1980), illustrates conclusively that the retroactivity in SB 311 is unconstitutional:

In an opinion by Justice Roberts, the Court held that a constitutional provision, like Article 19, providing that persons are entitled to justice "by the law of the land" means "that the law relating to the transaction in controversy, at the time when it is complete, shall be an inherent element of the case, and shall guide the decision; and that the case shall not be altered, in substance, by any subsequent law." *Dua*, 370 Md. at 645.

In this instance, the "law of the land" is the existing law at the time when a cause of action for negligence accrued, and that law cannot be "altered, in substance, by any subsequent law." Because SB 311 retroactively impairs accrued causes of action, it is clearly unconstitutional.



# Maryland Association for Justice, Inc.

## 2021 Position Paper

The unconstitutionality of SB 311 is not remedied by the fact that plaintiffs still may recover for “gross negligence<sup>1</sup> or intentional wrongdoing.” Such claims are much more difficult to prove, and are not in any way equivalent to negligence claims.

Nor does “good faith” save SB 311 from unconstitutionality. The application of a “good faith” standard itself abolishes the right vested in an accrued cause of action for negligence:

[N]egligence and lack of good faith are not equivalent. Simply put, if good faith immunity can be overcome by establishing negligence, then good faith immunity is a meaningless concept as one would have to be free from negligence, and thus not liable in any event, to also avail one's self of the doctrine of good faith immunity. . . . To further illuminate the definition of “good-faith,” we found it most instructive to compare the definition of “bad-faith.” “Bad-faith” is the opposite of good faith; it is not simply bad judgment or negligence, but it implies a dishonest purpose or some moral obliquity and a conscious doing of wrong. *Rite Aid Corp. v. Hagley*, 374 Md. 665, 680-682 (2003).

Even if it did not completely abolish causes of action for negligence that accrued in the past (which it does), SB 311 is still unconstitutional. As *Dua* makes clear, a retroactive law is unconstitutional if it merely *impairs or interferes with* an accrued cause of action. Plainly, that is precisely what SB 311 does, and what it intends to do.

The constitutional standard for determining the validity of retroactive civil legislation “is whether vested rights are *impaired*.” *Dua*, 370 Md. at 623 (emphasis added). The provision of the Maryland constitution cited “for *the principle that retroactive legislation impairing vested rights is invalid* is Article 24 of the Declaration of Rights, which is often referred to as the Maryland Constitution’s due process clause.” *Dua*, 370 Md. at 628 (tracing history of Article 24 to the Magna Carta). This ancient principle of constitutional law precludes passage of SB 311.

Nobody (except perhaps lawyers who charge by the hour) benefits when the Legislature enacts an unconstitutional law. Such legislation would spawn endless litigation over its validity until, finally, the Court of Appeals declares what everyone already knew – that the law does not pass constitutional muster. Unconstitutional laws – like SB 311 – must not be enacted.

**The Maryland Association for Justice respectfully requests  
an UNFAVORABLE report on SB 311.**

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<sup>1</sup> “[A] wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.” *Stracke v. Estate of Butler*, 465 Md. 407, 422 (2019).