

SENATE, No. 3731

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 11, 2021

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Ends civil immunity provided to certain health care professionals and health care facilities related to coronavirus disease 2019 (COVID-19) response.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning civil immunity for health care professionals
2 and amending P.L.2020, c.18.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.2020, c.18 is amended to read as follows:

8 1. a. The Legislature finds and declares:

9 This statement of legislative intent is made to establish clearly
10 our intent because of the lack of committee hearings. This statement
11 shall be made an official part of the record in establishing this
12 Legislature's intent.

13 It has been reported that this bill would grant immunity to all
14 medical doctors and healthcare workers in New Jersey for all
15 inpatient or outpatient procedures or any medical treatment
16 rendered during the timeframe of the COVID-19 emergency. This is
17 not an accurate statement.

18 The enactment of this bill is to ensure that there are no
19 impediments to providing medical treatment related to the COVID-
20 19 emergency and that all medical personnel supporting the
21 COVID-19 response are granted immunity. However, medical care
22 rendered in the ordinary course of medical practice does not provide
23 the granting of immunity. For example, procedures performed by
24 licensed medical professionals in their ordinary course of business,
25 including orthopedic procedures, OB/GYN services, and necessary
26 cardiological procedures.

27 It is not the Legislature's intent to grant immunity for medical
28 services, treatment and procedures that are unrelated to the COVID-
29 19 emergency.

30 b. As used in this section:

31 "Health care facility" means any healthcare facility as defined in
32 section 2 of P.L.2005, c.222 (C.26:13-2), and any modular field
33 treatment facility and any other site designated by the
34 Commissioner of Health for temporary use for the purpose of
35 providing essential services in support of the State's response to the
36 outbreak of coronavirus disease during the public health emergency
37 and state of emergency declared by the Governor in Executive
38 Order 103 of 2020.

39 "Health care professional" means a physician, physician
40 assistant, advanced practice nurse, registered nurse, licensed
41 practical nurse, or other health care professional whose professional
42 practice is regulated pursuant to Title 45 of the Revised Statutes or
43 who is otherwise authorized to provide health care services in this
44 State, an emergency medical technician or mobile intensive care
45 paramedic certified by the Commissioner of Health pursuant to

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Title 26 of the Revised Statutes or who is otherwise authorized to
2 provide health care services in this State, and a radiologic
3 technologist regulated pursuant to Title 26 of the Revised Statutes
4 or who is otherwise authorized to provide health care services in
5 this State.

6 “Scarce critical resource allocation policy” means a policy,
7 protocol or guidelines for the allocation by a health care facility, or
8 a health care system that owns or operates more than one health
9 care facility, of ventilators, intensive care unit beds, or other
10 medical resources or supplies that may be in limited supply and
11 high demand during a public health emergency.

12 c. Notwithstanding the provisions of any law, rule, or
13 regulation to the contrary:

14 (1) a health care professional shall not be liable for civil
15 damages for injury or death alleged to have been sustained as a
16 result of an act or omission by the health care professional in the
17 course of providing medical services in support of the State’s
18 response to the outbreak of coronavirus disease during the [public
19 health emergency and state of emergency declared by the Governor
20 in Executive Order 103 of 2020] period running from March 9,
21 2020 through the effective date of P.L. , c. (pending before the
22 Legislature as this bill); and (2) a health care facility or a health
23 care system that owns or operates more than one health care facility
24 shall not be liable for civil damages for injury or death alleged to
25 have been sustained as a result of an act or omission by one or more
26 of its agents, officers, employees, servants, representatives or
27 volunteers, if, and to the extent, such agent, officer, employee,
28 servant, representative or volunteer is immune from liability
29 pursuant to paragraph (1) of this subsection.

30 Immunity shall also include any act or omission undertaken in
31 good faith by a health care professional or healthcare facility or a
32 health care system to support efforts to treat COVID-19 patients
33 and to prevent the spread of COVID-19 during the [public health
34 emergency and state of emergency declared by the Governor in
35 Executive Order 103 of 2020] period running from March 9, 2020
36 through the effective date of P.L. , c. (pending before the
37 Legislature as this bill), including but not limited to engaging in
38 telemedicine or telehealth, and diagnosing or treating patients
39 outside the normal scope of the health care professional’s license or
40 practice. The immunity granted pursuant to this subsection shall not
41 apply to acts or omissions constituting a crime, actual fraud, actual
42 malice, gross negligence, recklessness, or willful misconduct, and
43 shall be retroactive to March 9, 2020.

44 d. Notwithstanding the provisions of any law, rule, or
45 regulation to the contrary, a health care facility or a health care
46 system that owns or operates more than one health care facility
47 shall not be criminally or civilly liable for damages for injury or
48 death alleged to have been sustained as a result of an act or

1 omission by the facility or system or one or more of the facility's or
2 system's agents, officers, employees, servants, representatives or
3 volunteers during the **【public health emergency and state of**
4 **emergency declared by the Governor in Executive Order 103 of**
5 **2020】 period running from March 9, 2020 through the effective**
6 **date of P.L. , c. (pending before the Legislature as this bill)** in
7 connection with the allocation of mechanical ventilators or other
8 scarce medical resources, if the health care facility or system adopts
9 and adheres to a scarce critical resource allocation policy that at a
10 minimum incorporates the core principles identified by the
11 Commissioner of Health in an executive directive or administrative
12 order, and the health care facility's or system's agents, officers,
13 employees, servants, representatives and volunteers shall not be
14 civilly or criminally liable for an injury caused by any act or
15 omission pursuant to this subsection during the **【public health**
16 **emergency and state of emergency declared by the Governor in**
17 **Executive Order 103 of 2020】 period running from March 9, 2020**
18 **through the effective date of P.L. , c. (pending before the**
19 **Legislature as this bill)** pursuant to, and consistent with, such
20 policy.

21
22 2. Section 4 of P.L.2020, c.18 is amended to read as follows:

23 4. This act shall take effect immediately, and section 1 of this
24 act shall be retroactive to March 9, 2020 and shall expire upon the
25 effective date of P.L. , c. (pending before the Legislature as this
26 bill).

27
28 3. This act shall take effect immediately.
29
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31 STATEMENT

32
33 This bill ends the civil immunity that was granted to certain
34 health care professionals and health care facilities in relation to the
35 State's response to the coronavirus disease 2019 (COVID-19)
36 pandemic.

37 Specifically, P.L.2020, c.18 provided that, for the duration of the
38 public health emergency and state of emergency declared by the
39 Governor in response to the COVID-19 pandemic, health care
40 professionals would not be liable for civil damages for injury or
41 death resulting in the course of providing medical services in
42 support of the State's response to the pandemic, and health care
43 facilities would not be liable for civil damages for injury or death
44 resulting from acts or omissions by their agents, officers,
45 employees, servants, representatives or volunteers, if the agent,
46 officer, employee, servant, representative or volunteer would
47 otherwise be immune from liability under that law. P.L.2020, c.18
48 further provided immunity to health care professionals and health

1 care facilities in certain additional situations, including while
2 engaging in telemedicine or telehealth, when diagnosing or treating
3 patients outside the normal scope of the health care professional's
4 license or practice, and in connection with the allocation of
5 mechanical ventilators and other scarce medical resources
6 consistent with established State policies. The civil and criminal
7 immunity conferred under P.L.2020, c.18, which took effect April
8 14, 2020, was made retroactive to March 9, 2020.

9 This bill provides that the immunity provisions of P.L.2020, c.18
10 will expire upon the effective date of this bill, and will not remain
11 in effect for the remainder of the state of emergency and public
12 health emergency declared in response to the COVID-19 pandemic,
13 as they would have under the provisions of P.L.2020, c.18 as
14 originally enacted.