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SENATE BILL NO. 148

Offered January 12, 2022

Prefiled January 9, 2022

A *BILL to amend and reenact §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia, relating to public health emergencies; immunity for health care providers.*

Patron—Norment

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-225.01. Certain immunity for health care providers during disasters under specific circumstances.

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster ~~by delivering health care to persons injured in such disaster or who commits any act or omission as directed by any order of public health in response to such disaster~~ shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a ~~state or~~ local emergency, *state of emergency, or public health emergency* has been or is subsequently declared, and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster, *order of public health, resource shortage, or other condition arising out of the disaster.*

B. In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the applicable standards of an approved national accrediting organization for granting emergency practice privileges.

C. For the purposes of this section:

"Approved national accrediting organization" means an organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).

"Communicable disease of public health threat" *has the same definition as provided in § 44-146.16.*

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16; ~~and.~~

"Health care provider" ~~means those professions defined as such~~ *has the same definition as provided in § 8.01-581.1.*

"Local emergency" *has the same definition as provided in § 44-146.16.*

"Public health emergency" means the condition declared by the State Commissioner of Health when, in his judgment, the threat or actual occurrence of a disaster due to a communicable disease of public health threat in any part of the Commonwealth is of sufficient severity and magnitude to warrant public health orders and other measures aimed at preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.

"Resource shortage" *has the same definition as provided in § 44-146.16.*

"Responds to a disaster" shall be deemed to include compliance with any order of public health or temporary withholding of the provision of procedures, consultations, or surgeries pursuant to an order of public health.

"State of emergency" *has the same definition as provided in § 44-146.16.*

D. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any immunities provided in other state or federal law, including, but not limited to, §§ 8.01-225 and 44-146.23.

§ 8.01-225.02. Certain liability protection for health care providers during disasters.

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a ~~state or~~ local emergency, *state of emergency, or public health emergency* has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care

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59 provider unable to provide the level or manner of care that otherwise would have been required in the
60 absence of the emergency and which resulted in the injury or wrongful death at issue.

61 B. For purposes of this section:

62 *"Alternate care site" includes any facility, structure, device, or location established by the state or*
63 *any public or private entity for screening, examination, treatment, or recovery of any individual during*
64 *a disaster or otherwise in furtherance of any order of public health or other order or to allow access to*
65 *care during the state of emergency, such as any modular field treatment facility or any other site*
66 *designated by the state for temporary use for the purpose of providing essential services and support of*
67 *disaster response, including in ambulatory surgical centers, hotels, dormitories, temporary structures,*
68 *telemedicine or telehealth platforms, or other sites.*

69 *"Communicable disease of public health threat" has the same definition as provided in § 44-146.16.*

70 *"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and*
71 *defined in § 44-146.16; and.*

72 *"Emergency and subsequent conditions caused by a lack of resources, attributable to the disaster,*
73 *rendering the health care provider unable to provide the level or manner of care that otherwise would*
74 *have been required in the absence of the emergency" includes (i) insufficient availability of personal*
75 *protective equipment, ventilators, or other drugs, blood products, supplies, or equipment; (ii) insufficient*
76 *availability of trained staff; (iii) having licensed health care professionals deliver care that, while*
77 *included in the scope of their licensure, exceeds the scope of their credentials at the hospital or other*
78 *health care facility at which they deliver services or exceeds the scope of the services that they normally*
79 *provide; (iv) delivery of care in an alternate care site; (v) implementation or execution of triage*
80 *protocols or scarce resource allocation policies necessitated by health care provider declaration of*
81 *crisis standards of care; and (vi) using supplies or equipment in innovative ways that are different from*
82 *the way that these supplies and equipment are normally used.*

83 *"Health care provider" has the same definition as provided in § 8.01-581.1.*

84 *"Local emergency" has the same definition as provided in § 44-146.16.*

85 *"Public health emergency" has the same definition as provided in § 8.01-225.01.*

86 *"Resource shortage" has the same definition as provided in § 44-146.16.*

87 *"Responds to a disaster" has the same definition as provided in § 8.01-225.01.*

88 *"State of emergency" has the same definition as provided in § 44-146.16.*