



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.¹ 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

¹ American Tort Reform Association (ATRA). “COVID-19 Liability Resources.” 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