

ASSEMBLY, No. 4767

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Restores civil liability of nursing homes and related facilities during public health emergency and state of emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/7/2020)

1 AN ACT concerning certain civil liabilities for long-term facilities
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"]** Except as provided in section 2 of P.L. _____,
32 c. (pending before the Legislature as this bill), "health care
33 facility" means any healthcare facility as defined in section 2 of
34 P.L.2005, c.222 (C.26:13-2), and any modular field treatment
35 facility and any other site designated by the Commissioner of
36 Health for temporary use for the purpose of providing essential
37 services in support of the State's response to the outbreak of
38 coronavirus disease during the public health emergency and state of
39 emergency declared by the Governor in Executive Order 103 of
40 2020.

41 "Health care professional" means a physician, physician
42 assistant, advanced practice nurse, registered nurse, licensed
43 practical nurse, or other health care professional whose professional
44 practice is regulated pursuant to Title 45 of the Revised Statutes or
45 who is otherwise authorized to provide health care services in this

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 State, an emergency medical technician or mobile intensive care
2 paramedic certified by the Commissioner of Health pursuant to
3 Title 26 of the Revised Statutes or who is otherwise authorized to
4 provide health care services in this State, and a radiologic
5 technologist regulated pursuant to Title 26 of the Revised Statutes
6 or who is otherwise authorized to provide health care services in
7 this State.

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

14 c. **【Notwithstanding】** Except as provided in section 2 of
15 P.L. , c. (pending before the Legislature as this bill),
16 notwithstanding the provisions of any law, rule, or regulation to the
17 contrary:

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

32 Immunity shall also include any act or omission undertaken in
33 good faith by a health care professional or healthcare facility or a
34 health care system to support efforts to treat COVID-19 patients
35 and to prevent the spread of COVID-19 during the public health
36 emergency and state of emergency declared by the Governor in
37 Executive Order 103 of 2020, including but not limited to engaging
38 in 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】** Except as provided in section 2 of
45 P.L. , c. (pending before the Legislature as this bill),
46 notwithstanding the provisions of any law, rule, or regulation to the
47 contrary, a health care facility or a health care system that owns or
48 operates more than one health care facility shall not be criminally or

1 civilly liable for damages for injury or death alleged to have been
2 sustained as a result of an act or omission by the facility or system
3 or one or more of the facility's or system's agents, officers,
4 employees, servants, representatives or volunteers during the public
5 health emergency and state of emergency declared by the Governor
6 in Executive Order 103 of 2020 in connection with the allocation of
7 mechanical ventilators or other scarce medical resources, if the
8 health care facility or system adopts and adheres to a scarce critical
9 resource allocation policy that at a minimum incorporates the core
10 principles identified by the Commissioner of Health in an executive
11 directive or administrative order, and the health care facility's or
12 system's agents, officers, employees, servants, representatives and
13 volunteers shall not be civilly or criminally liable for an injury
14 caused by any act or omission pursuant to this subsection during the
15 public health emergency and state of emergency declared by the
16 Governor in Executive Order 103 of 2020 pursuant to, and
17 consistent with, such policy.

18 (cf: P.L.2020, c.18)

19
20 2. (New section) a. The civil immunity provided by section 1
21 of P.L.2020, c.18 for the duration of the public health emergency
22 and state of emergency declared by the Governor in Executive
23 Order 103 of 2020 shall not apply to a nursing home or related
24 facility for injury or death alleged to have been sustained as a result
25 of an act or omission by one or more of the facility's agents,
26 officers, employees, servants, representatives or volunteers.

27 b. As used in this section, a "nursing home or related facility"
28 includes a home health agency, hospice, intermediate care facility,
29 dialysis center, long-term care facility, rehabilitation facility,
30 residential treatment facility, skilled nursing facility, and adult day
31 care center.

32
33 3. This act shall take effect immediately and shall apply to any
34 civil action that accrues on or after the effective date.

35 36 37 STATEMENT

38
39 Under P.L.2020, c.18, a health care facility or a health care
40 system that owns or operates more than one health care facility is
41 not liable for civil damages for injury or death alleged to have been
42 sustained as a result of an act or omission by one or more of its
43 agents, officers, employees, servants, representatives or volunteers
44 in the course of providing medical services in support of the State's
45 response to the outbreak of coronavirus disease during the public
46 health emergency and state of emergency declared by the Governor
47 in Executive Order 103 of 2020. The Executive Order was issued
48 March 9, 2020.

1 This bill removes the civil immunity provided by P.L.2020, c.18
2 to nursing homes and related facilities. Under the bill, these
3 facilities would be liable in civil actions for injury or death alleged
4 to have been sustained as a result of an act or omission by one or
5 more of the facility's agents, officers, employees, servants,
6 representatives or volunteers.

7 The bill provides that the term "nursing home or related facility"
8 includes a home health agency, hospice, intermediate care facility,
9 dialysis center, long-term care facility, rehabilitation facility,
10 residential treatment facility, skilled nursing facility, and adult day
11 care center.

12 The bill would shall take effect immediately and would not be
13 retroactive. It would apply to any civil action for injury or death
14 that occurs on or after the effective date of the bill.