

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/3/21
A Bill

HOUSE BILL 1521

By: Representatives McCollum, Gonzales

By: Senator Gilmore

For An Act To Be Entitled

AN ACT TO CODIFY EXECUTIVE ORDERS 20-18 AND 20-34 TO ENSURE HEALTHCARE PROFESSIONALS ARE EQUIPPED WITH THE TOOLS NECESSARY TO COMBAT COVID-19 AND HAVE ACCESS TO HEALTHCARE RESOURCES TO TREAT COVID-19; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CODIFY EXECUTIVE ORDERS 20-18 AND 20-34 TO ENSURE HEALTHCARE PROFESSIONALS ARE EQUIPPED WITH THE TOOLS NECESSARY TO COMBAT COVID-19; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 12, Chapter 75, Subchapter 1, is amended to add an additional section to read as follows:

12-75-134. COVID-19 pandemic – Definitions – Healthcare providers – Immunity.

(a) As used in this section:

(1) "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), coronavirus disease 2019 (COVID-19), or any other disease, health condition, or threat caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or by any virus mutated from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

(2) "Emergency management functions" means functions that



include:

(A) Triage, diagnostic testing, or treatment, or a combination of triage, diagnostic testing, or treatment, provided to individuals who are known to have or suspected to have COVID-19;

(B) Cancelling, postponing, or denying elective procedures or other routine care for an illness or condition that does not fall within the scope of the COVID-19 pandemic;

(C) Redeploying of employees or contractors outside of their usual practice areas or not typically assigned to duties as described in subdivision (2)(A) or subdivision (2)(B) of this section, or both, within the employee's or contractor's licensure, certification, or scope of practice to the extent necessary to respond to staff shortages related to the COVID-19 pandemic;

(D) Planning to enact or enacting crisis standard-of-care measures, consistent with federal regulations and guidance, including without limitation waiving restrictions on numbers or locations of patient beds or staff-to-patient ratios, modifying the number of beds available, preserving personal protective equipment, and triaging or rationing access to treatments, services, or equipment; and

(E) Reducing recordkeeping requirements to the extent necessary for healthcare providers to perform tasks as may be necessary to respond to the COVID-19 pandemic;

(3) "Healthcare provider" means:

(A) An individual who is licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of the practice of his or her profession; or

(B) A partnership, association, corporation, or other facility or institution that employs or contracts with individuals to provide healthcare services in the normal course and scope of business or operation, whether for profit or not for profit; and

(4) "Healthcare service" means any care, treatment, service, or procedure performed by any healthcare provider to diagnose, treat, cure, mitigate, or prevent the illness or health condition that is causing a public health emergency.

(b) In response to the COVID-19 pandemic, all healthcare providers licensed and permitted to practice in the state are requested to and may

provide:

(1) Services in support of this state and the administrators of this state; and

(2) Healthcare services, assistance, and advice.

(c) When necessary, a healthcare provider affected by COVID-19 shall remove limits on working hours for physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses to maintain adequate staffing and otherwise respond to COVID-19.

(d) For the purposes of diagnosing, treating, mitigating, or curing COVID-19, a healthcare provider may use any drug, device, or product:

(1) Approved or cleared under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-392, as existing on January 1, 2021;

(2) Licensed under the Public Health Service Act, 42 U.S.C. §§ 201-291n, as existing on January 1, 2021; and

(3) Authorized for emergency use under an Investigational Device Exemption or Investigational New Drug Application of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-392, as existing on January 1, 2021.

(e)(1) A healthcare provider may:

(A) Provide healthcare services that are directed at the treatment or mitigation of COVID-19 or its symptoms in response to the COVID-19 pandemic;

(B) Perform healthcare services directed at the prevention, treatment, mitigation, or cure of COVID-19; and

(C) Perform other emergency management functions related to COVID-19 within the scope of his or her licensure.

(2) A healthcare provider shall be considered an emergency responder when providing or performing healthcare services or functions as described by subdivision (e)(1) of this section and is subject to the same immunity from liability as provided in § 12-75-128.

(f) In addition to immunity under § 12-75-128, a healthcare provider is immune from liability:

(1)(A) For death, injury, or property damage alleged to have been sustained as a result of any act or omission by the healthcare provider in the course of performing emergency management functions related to COVID-19 if the act or omission:

(i) Occurs as a result of a good faith effort of the healthcare provider to provide a healthcare service for the diagnosis, treatment, cure, mitigation, or prevention of COVID-19; and

(ii) Was the direct result of the healthcare provider's providing a healthcare service to a patient for the treatment and mitigation of COVID-19 or its symptoms.

(B) However, the immunity under subdivision (f)(1)(A) of this section does not apply to an act or omission that is willful, reckless, or intentional misconduct; and

(2) For using any prescription drug or device to treat a patient who is known to have or suspected to have COVID-19 if:

(A) The prescription of the drug or device is within the scope of the healthcare provider's license; and

(B) The healthcare provider informs the patient of known positive and negative outcomes of the prescription drug or device and documents the informed consent of the patient to the treatment in the patient's medical record.

(g) This section expires on May 1, 2023, unless extended by the General Assembly.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the healthcare providers need flexibility and emergency procedures in place to combat COVID-19 and other medical pandemics; that healthcare providers should be shielded from lawsuits during the COVID-19 pandemic so as to protect them from potentially frivolous actions while the healthcare providers are battling to save lives; and that this act is immediately necessary because healthcare providers need legal protections, flexibility, and emergency procedures in place for pandemics in order to provide proper healthcare services, assistance, and advice during the COVID-19 pandemic. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/McCollum