

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 13

By: Senator D. Sullivan
By: Representative Gonzales

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 CORONAVIRUS 2019 (COVID-19) AND HAVE ACCESS TO HEALTHCARE RESOURCES TO TREAT CORONAVIRUS 2019 (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 CORONAVIRUS 2019 (COVID-19); AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 12-75-103, concerning the definitions within the Arkansas Emergency Services Act of 1973, is amended to add additional subdivisions to read as follows:

(23) "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 coronavirus 2019 (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 coronavirus 2019 (COVID-19) pandemic;

(C) Redeploying or cross training staff not typically assigned to duties as described in subdivision (23)(A) or subdivision (23)(B) of this section, or both, to the extent necessary to respond to the coronavirus 2019 (COVID-19) pandemic;

(D) Planning to enact or enacting crisis standard-of-care measures, including without limitation modifying the number of beds available, preserving personal protective equipment, and triaging access to 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 coronavirus 2019 (COVID-19) pandemic;

(24) "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; and

(25) "Healthcare service" means any act or treatment performed by any healthcare provider to a patient during the patient's medical care, treatment, or hospitalization.

SECTION 2. Arkansas Code Title 12, Chapter 75, Subchapter 1, is amended to add additional sections to read as follows:

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

(a) In response to the coronavirus 2019 (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.

(b) When necessary, healthcare providers affected by coronavirus 2019 (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 coronavirus 2019 (COVID-19).

(c) For the purposes of diagnosing, treating, mitigating, or curing coronavirus 2019 (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.

(d)(1) A healthcare provider may:

(A) Provide healthcare services that are directed at the treatment or mitigation of coronavirus 2019 (COVID-19) or its symptoms in response to the coronavirus 2019 (COVID-19) pandemic;

(B) Perform healthcare services directed at the prevention, treatment, mitigation, or cure of coronavirus 2019 (COVID-19); and

(C) Perform other emergency management functions related to coronavirus 2019 (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 (d)(1) of this section and is subject to the same immunity from liability as provided in § 12-75-128.

(e) 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 coronavirus 2019 (COVID-19) if the act or omission:

(i) Occurs as a result of a good faith effort of the healthcare provider; and

(ii) Was the direct result of the healthcare provider's providing a healthcare service to a patient for the treatment and

mitigation of coronavirus 2019 (COVID-19) or its symptoms.

(B) However, the immunity under subdivision (e)(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 coronavirus 2019 (COVID-19) if:

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

(B) The healthcare provider prescribes the drug or device in accordance with the most current written recommendations of a United States Government agency; and

(C) 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.

12-75-135. Department of Health – Emergency medical treatment protocol.

(a)(1) The Department of Health shall coordinate and maintain an emergency medical treatment protocol for pandemics, including without limitation the coronavirus 2019 (COVID-19) pandemic, and keep the protocol current.

(2) The protocol may include without limitation:

(A) Emergency management functions; and

(B) Services provided in response to personnel shortages.

(b)(1) In preparing and revising the protocol, the department shall seek the advice and assistance of state agencies, local government, business, labor, industry, agriculture, civic, and volunteer organizations, and community leaders.

(2) In advising local and jurisdictional agencies, the department shall encourage the local and jurisdictional agencies also to seek advice from the entities listed in subdivision (b)(1) of this section.

SECTION 3. 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 coronavirus 2019

(COVID-19) and other medical pandemics; that healthcare providers should be shielded from lawsuits during the coronavirus 2019 (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 coronavirus 2019 (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.