

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/3/21

A Bill

HOUSE BILL 1521

5 By: Representatives McCollum, Gonzales
6 By: Senator Gilmore
7

For An Act To Be Entitled

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

16 TO CODIFY EXECUTIVE ORDERS 20-18 AND 20-
17 34 TO ENSURE HEALTHCARE PROFESSIONALS ARE
18 EQUIPPED WITH THE TOOLS NECESSARY TO
19 COMBAT COVID-19; AND TO DECLARE AN
20 EMERGENCY.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code Title 12, Chapter 75, Subchapter 1, is
27 amended to add an additional section to read as follows:

28 12-75-134. COVID-19 pandemic – Definitions – Healthcare providers –
29 Immunity.

30 (a) As used in this section:

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

36 (2) "Emergency management functions" means functions that



1 include:

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

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

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

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

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

23 (3) "Healthcare provider" means:

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

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

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

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

1 provide:

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

4 (2) Healthcare services, assistance, and advice.

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

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

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

14 (2) Licensed under the Public Health Service Act, 42 U.S.C. §§
15 201-291n, as existing on January 1, 2021; and

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

19 (e)(1) A healthcare provider may:

20 (A) Provide healthcare services that are directed at the
21 treatment or mitigation of COVID-19 or its symptoms in response to the COVID-
22 19 pandemic;

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

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

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

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

33 (1)(A) For death, injury, or property damage alleged to have
34 been sustained as a result of any act or omission by the healthcare provider
35 in the course of performing emergency management functions related to COVID-
36 19 if the act or omission:

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

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

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

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

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

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

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

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

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

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

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

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/s/McCollum