The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND TWENTY

AN ACT TO PROVIDE LIABILITY PROTECTIONS FOR HEALTH CARE WORKERS AND FACILITIES DURING THE COVID-19 PANDEMIC

Whereas, The deferred operation of this act would tend to defeat its purposes, which are forthwith to make certain changes in law in response to a public health emergency, each of which is immediately necessary to carry out to accomplish important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. As used in sections 1 through 4, inclusive, the following terms shall have the following meanings:

"COVID-19 emergency", the state of emergency declared by the governor on March 10, 2020 pursuant to executive order 591.

"COVID-19 emergency rule", an executive order, order of the commissioner of public health, declaration, directive or other state or federal authorization, policy, statement, guidance, rule-making or regulation that waives, suspends, or modifies otherwise applicable state or federal law, regulations or standards regarding (i) scope of practice or conditions of licensure, including modifications authorizing health care professionals licensed in another state to practice in the commonwealth, or (ii) the delivery of care, including those regarding the standard of care, the

site at which care is delivered or the equipment used to deliver care, during the COVID-19 emergency.

"Health care services", services provided by a health care facility or health care professional, regardless of location, that involve:

(a) The treatment, diagnosis, prevention or mitigation of COVID-19;

(b) The assessment or care of an individual with a confirmed or suspected case of COVID-19; or

(c) The care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency.

"Damages", injury or loss of property or personal injury or death, including economic or non-economic losses.

"Good faith", shall, without limitation, include acts or omissions undertaken consistent with the guidelines for crisis standards of care for the COVID-19 pandemic issued by the department of public health, and exclude, without limitation, acts or omissions based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity, and deceptive acts or practices, and fraud.

"Health care facility", means:

i. Hospitals, including acute and chronic disease rehabilitation hospitals, as licensed under section 51 of chapter 111 of the General Laws;

ii. State hospitals, mental health centers and other mental health facilities under the control of the department of mental health pursuant to section 7 of chapter 19 of the General Laws;

iii. Hospitals operated by the department of public health pursuant to chapter 62I of the General Laws, section 69E of chapter 111 of the General Laws and chapter 122 of the General Laws;

iv. Psychiatric hospitals, as licensed under section 19 of chapter 19 of the General Laws;

v. Skilled nursing facilities, as licensed under section 71 of chapter 111 of the General Laws;

vi. Assisted living residences, as defined in section 1 of chapter 19D of the General Laws;

vii. Rest homes, as referenced in section 71 of chapter 111of the General Laws;

viii. Community health centers, as defined in 130 CMR 405.000 and mental health centers, as defined in 130 CMR 429.000;

ix. Home health agencies that participate in Medicare; or

x. A site designated by the commissioner of public health to provide COVID-19 health care services, including, without limitation, step-down skilled nursing facilities, field hospitals, and hotels.

"Health care professional", an individual, whether acting as an agent, volunteer, contractor, employee or otherwise, who is:

i. Authorized to provide health care services pursuant to licensure or certification by the Board of Registration in Medicine, the Board of Registration in Nursing, the Board of Respiratory Care, the Board of Registration of Nursing Home Administrators, the Board of Registration in Pharmacy, the Board of Registration of Physician Assistants, the Board of Registration of Allied Health Professionals, the Board of Allied Mental

Health and Human Services Professions, the Board of Registration of Social Workers and the Board of Registration of Psychologists;

ii. A student or trainee in his or her approved medical professional services academic training program;

iii. A nursing attendant or certified nursing aide, including an individual who is providing care as part of his or her approved nursing attendant or certified nurse aide training program;

iv. Certified, accredited or approved under chapter 111C of the General Laws to provide emergency medical services;

v. A nurse and home health aide employed by home health agency that participates in Medicare;

vi. Providing health care services within the scope of authority or license permitted by a COVID-19 emergency rule; or

vii. A health care facility administrator, executive, supervisor, board member, trustee or other person responsible for directing, supervising or managing a health care facility or its personnel.

"Volunteer organization", an organization, company or institution that makes its facility available to support the commonwealth's response and activities under the COVID-19 emergency.

SECTION 2.

(a) Notwithstanding any general or special law to the contrary, except as provided in subsection (b), health care professionals and health care facilities shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health

care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency, provided that:

1. the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law;
2. arranging for or providing care or treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak or COVID-19 emergency rules; and
3. the health care facility or health care professional is arranging for or providing health care services in good faith.

(b) The immunity provided in subsection (a) shall not apply if the damage was caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm by a health care facility or health care professional providing health care services, and shall not apply to consumer protection actions brought by the Attorney General, or to false claims actions brought by or on behalf of the Commonwealth

SECTION 3. Notwithstanding any general or special law to the contrary, a volunteer organization shall be immune from suit and civil liability for any damages occurring in or at the volunteer organization's facility where the damage arises from use of the facility for the commonwealth's response and activities related to the COVID-19 emergency, unless it is established that the damages were caused by the volunteer organization's gross negligence, recklessness, or conduct with an intent to harm.

SECTION 4. This act shall take effect upon its passage and shall apply to claims based on acts or omissions that occur or have occurred during the effective period of the COVID-19 emergency, as declared on March 10, 2020 and until terminated or rescinded.