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Final Analysis

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SUMMARY

Temporary civil immunity for health care providers

- In temporary law, grants qualified civil immunity to specified health care providers who provide health care services or emergency services during a declared disaster or emergency as described below.
- Grants immunity from tort liability and professional discipline for such services provided as a result of and in response to a disaster or emergency that results in injury, death, or loss allegedly resulting from (1) actions or omissions related to those services, (2) decisions related to those services, and (3) compliance with an executive order or director's order.
- Grants immunity from tort liability and professional discipline for injury, death, or loss allegedly resulting because a health care provider was unable to treat a person due to an executive or director's order or a local health order issued in relation to a public health emergency.

Exceptions to immunity

- Excludes from immunity in tort actions conduct that constitutes a reckless disregard of the consequences or intentional, willful, or wanton misconduct.
- Excludes from immunity in professional disciplinary actions conduct that constitutes gross negligence.
- Excludes from immunity conduct outside the skills, education, or training of the health care provider, unless undertaken in good faith in response to a lack of resources caused by a disaster or emergency.

Limitations

- Specifies that the immunity does not create a new cause of action or substantive legal right against a health care provider or affect any immunities or responsibilities of a health care provider.
- Prohibits a class action when the immunity does not apply.
- Limits the act's provisions regarding immunity for health care providers to March 9, 2020, through September 30, 2021.

General immunity

- In temporary law, generally prohibits bringing a civil action for injury, death, or loss to person or property against any person for injury, death, or loss caused by exposure to, or transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2.
- Negates that immunity when the exposure, transmission, or contraction was by "reckless conduct" or intentional, willful, or wanton misconduct.
- Prohibits a class action when the general immunity does not apply.
- Specifies that a government order, recommendation, or guideline does not create a duty of care on a person that may be enforced in a cause of action or that may create a new cause of action or substantive right against any person.
- Limits the immunity to March 9, 2020, through September 30, 2021.

Legislative findings and statement of intent

- Based on enumerated findings, declares the General Assembly's intent that executive branch and local orders and recommendations do not create new legal duties for purposes of tort liability and are presumed to be (1) irrelevant to the existence or breach of a duty and (2) inadmissible to establish the existence or breach of a duty.

Other

- Specifies that the act's provisions apply from March 9, 2020, through September 30, 2021.
- Specifies that if any provision of the act is found invalid, it does not affect other provisions of the act that can be given effect without the invalid provision.

DETAILED ANALYSIS

Qualified immunity for health care providers in a disaster or emergency

The act grants temporary qualified civil immunity for health care providers rendering health care services during a declared disaster or emergency. Under the act, a health care provider who provides health care services, emergency medical services, first-aid treatment, or other emergency professional care (including providing any medication, medical equipment, or

other medical product), as a result of or in response to a disaster or emergency is not subject to professional disciplinary action and is not liable in a tort action to any person or government agency for injury, death, or loss to person or property arising from any of the following:

- An act or omission of the health care provider in the provision, withholding, or withdrawal of those services;
- Any decision related to providing, withholding, or withdrawing those services;
- Compliance with an executive order or director's order issued during and in response to the disaster or emergency.¹

The immunity applies to actions, omissions, decisions, or compliance as a result of or in response to a disaster or emergency and through the duration of the disaster or emergency.²

A "disaster" is any occurrence of widespread personal injury or loss of life that results from any natural or technological phenomenon or act of a human, or an epidemic and is declared to be a disaster by the federal government, the state government, or a political subdivision of Ohio.³ An "emergency" is any period during which Congress, the Governor, a board of county commissioners, a board of township trustees, or a mayor or city manager in Ohio has declared or proclaimed that an emergency exists.⁴

"Health care services" are services rendered by a health care provider for the diagnosis, prevention, treatment, cure, or relief of a health care condition, illness, injury, or disease. It also includes personal care services (assisting with activities of daily living and self-administration of medication and preparing special diets) and experimental treatments.⁵ A tort action is a civil action for injury, death, or loss to person or property, including a medical claim, and includes claims arising under resident or patient bills of rights and contractual claims arising out of statutory or regulatory requirements applicable to health care providers.⁶

Inability to provide services

The act further provides that a health care provider is not subject to professional discipline nor liable in a tort action for injury, death, or loss to person or property that allegedly arises because the provider was unable to treat, diagnose, or test a person for any illness, disease, or condition due to an executive or director's order or an order of a local board of health issued in relation to an epidemic, pandemic, or other public health emergency.⁷

¹ Section 1(B)(1).

² Section 1(C)(5).

³ Section 1(A)(10).

⁴ Section 1(A)(11), referencing R.C. 5502.21.

⁵ Section 1(A)(21); R.C. 3721.01, not in the act.

⁶ Section 1(A)(46).

⁷ Section 1(B)(4).

Covered providers

The act grants immunity to the following individuals and entities:⁸

Advanced practice registered nurses, registered nurses, and licensed practical nurses

Respiratory care professionals

Pharmacist

Direct support professionals for individuals with developmental disabilities

Dentists and dental hygienists

Behavioral health providers

Optometrists

Emergency medical technicians (EMTs-basic, EMTs-I, and paramedics)

Physicians

Home health agencies

Physician assistants

Hospice care programs

Chiropractors

Medicaid home and community-based services providers

Physical therapists, occupational therapists, and athletic trainers

Other health care workers who provide health-care related services to an individual under the direction of a health care professional with the authority to direct that worker's activities, including medical technicians, medical assistants, dental assistants, occupational therapy assistants, physical therapist assistants, orderlies, nurse aides, and any other similar individual

Speech language-pathologists and audiologists

Facilities that provide health care services, including a variety of facilities the act specifies⁹

⁸ Section 1(A)(20).

⁹ Section 1(A)(15).

Laboratory workers

Agents, board members, committee members, employees, employers, officers, or volunteers of a home health agency, hospice care program, Medicaid home and community-based services provider, or facility

Massage therapists

Exceptions to immunity

Reckless disregard or intentional misconduct or willful or wanton misconduct

In a tort action, the immunity does not apply to actions, omissions, decisions, or compliance that constitute a reckless disregard for the consequences so as to affect the life or health of a patient, or intentional, willful, or wanton misconduct. “Reckless disregard” means conduct by which, with heedless indifference to the consequences, the health care provider disregards a substantial and unjustifiable risk that the health care provider’s conduct is likely to cause, at the time health care or emergency services were rendered, an unreasonable risk of injury, death, or loss to person or property.¹⁰

Gross negligence

In a professional disciplinary action, the immunity does not apply to actions, omissions, decisions, or compliance that constitutes gross negligence (a lack of care so great that it appears to be a conscious indifference to the rights of others).¹¹

Outside skills, education, and training

The immunity does not apply in a tort or professional disciplinary action for actions that are outside the skills, education, or training of the health care provider, unless the provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.¹²

Interaction with other legal rights and duties

The immunity does not create a new cause of action or substantive legal right against a health care provider, affect any immunities established by another section of the Revised Code or at common law, or affect any legal responsibility of a health care provider to comply with any state law or administrative rule.¹³ While the act’s immunity is in effect, it supersedes law

¹⁰ Section 1(A)(42) and (B)(2).

¹¹ Section 1(A)(18) and (B)(3).

¹² Section 1(C)(3).

¹³ Section 1(C)(1), (2), and (4).

(unchanged by the act) that grants immunity to certain health care providers who render emergency services as a result of a disaster.¹⁴

Class action prohibition

With regard to the immunity described above, when it does not apply, the act prohibits bringing a class action against a health care provider.¹⁵

General qualified immunity

The act temporarily prohibits bringing a civil action for damages for injury, death, or loss to person or property against any “person” if the cause of action involves exposure to, or the transmission or contraction of, “MERS-CoV,” “SARS-CoV,” or “SARS-CoV-2,” or any mutation thereof, unless it is established that the exposure, transmission, or contraction was by “reckless conduct” or intentional, willful, or wanton misconduct.¹⁶ (See “**Definitions.**”)

Class action prohibition

As with the immunity that applies to health care providers, if the general immunity does not apply, the act prohibits bringing a class action.¹⁷

Effect of government order

Under the act, a government order, recommendation, or guideline neither creates nor is to be construed as creating a duty of care upon any person that may be enforced in a cause of action or create a new cause of action or substantive legal right against any person with respect to the matters contained in that order, recommendation, or guideline. A presumption exists that any such government order, recommendation, or guideline is not admissible as evidence that a duty of care, a new cause of action, or a substantive legal right has been established.¹⁸

Definitions

For purposes of the general immunity:¹⁹

“**Person**” means an individual, corporation, business trust, estate, trust, partnership, and association as in continuing law, and also includes a school, a for-profit or nonprofit entity, a governmental entity, a religious entity, or a state institution of higher education.²⁰

“**Reckless conduct**” means conduct by which, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person’s

¹⁴ Section 1(E); R.C. 2305.2311, not in the act.

¹⁵ Section 1(D).

¹⁶ Section 2(A).

¹⁷ Section 2(C).

¹⁸ Section 2(B).

¹⁹ Section 2(D).

²⁰ Section 2(D) and by reference to R.C. 1.59, not in the act.

conduct is likely to cause an exposure to, or a transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof, or is likely to be of a nature that results in exposure, transmission, or contraction. A person is reckless with respect to circumstances in relation to causing exposure, transmission, or contraction when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.²¹

Legislative findings and statement of intent

The act enumerates various findings by the General Assembly regarding the novelty and uncertainty about COVID-19 and civil liability. Based on these findings, the General Assembly declares its intent that orders and recommendations from the executive branch, counties and local municipalities, boards of health and other agencies, and any federal agency do not create any new legal duties for purposes of tort liability and are presumed to be (1) irrelevant to the issue of the existence or breach of a duty and (2) inadmissible at trial to establish proof of the existence or breach of a duty in tort actions.²²

Application to existing disasters

The act applies from March 9, 2020, through September 30, 2021.²³

Severability clause

If any provision or application of the act is held invalid, that does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.²⁴

HISTORY

Action	Date
Introduced	04-10-20
Reported, H. Civil Justice	05-28-20
Passed House (84-9)	05-28-20
Reported, S. Judiciary	06-30-20
Passed Senate (23-6)	06-30-20
House refused to concur in Senate amendments (1-92)	09-01-20
Senate requested conference committee	09-01-20

²¹ Section 2(D)

²² Section 3.

²³ Sections 1(E), 2(E), and 4.

²⁴ Section 5.

Action	Date
House acceded to request for conference committee	09-01-20
House agreed to conference committee report (63-30)	09-01-20
Senate agreed to conference committee report (23-8)	09-02-20