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House Bill 6159 (Substitute H-1 as passed by the House)  
Sponsor: Representative Roger Hauck  
House Committee: Judiciary  
Senate Committee: Health Policy and Human Services

Date Completed: 10-1-20

### **CONTENT**

**The bill would create the "Pandemic Health Care Immunity Act" to provide protection from liability for health care providers and health care facilities rendering health care services related to the COVID-19 pandemic, subject to exceptions, and prescribe the scope of the Act.**

#### Definitions

"Health care provider" would mean an individual that is one or more of the following:

- An individual licensed, registered, or otherwise authorized to engage in a health profession under Article 15 (Occupations) of the Public Health Code.
- Emergency medical services personnel.
- A student, trainee, volunteer, competency-evaluated nursing assistant, temporary nurse aide, or any other licensed, registered, or unlicensed individual otherwise authorized by law, executive order, or directive of the State to render health care services.

"Health care facility" would mean an entity that is one or more of the following, and includes any administrators, executives, supervisors, board members, trustees, employees, and volunteers of that entity:

- A health facility or agency as defined in Section 20106 of the Public Health Code.
- A State-owned surgical center.
- A State-operated outpatient facility.
- A State-operated veterans facility.
- A facility used as surge capacity for any of the health care facilities described in the bill.
- Any other entity that renders health care services.

(Under Section 20106 of the Public Health Code, "health facility or agency", except as provided in Section 20115 of the Code, means:

- An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
- A county medical care facility.
- A freestanding surgical outpatient facility.
- A health maintenance organization.
- A home for the aged.
- A hospital.

- A nursing home.
- A hospice.
- A hospice residence.
- A facility or agency listed above located in a university, college, or other educational institution.

Section 20115 allows the Department of Licensing and Regulatory Affairs to promulgate rules to further define the term "health facility or agency" and the definition of a health facility or agency listed in Section 20106 as required to implement Article 17 (Facilities and Agencies) of the Code. The term "health facility or agency" does not mean a visiting nurse service or home aide service conducted by and for the adherents of a church or religious denomination for the purpose of providing service for those who depend upon spiritual means through prayer alone for healing.)

"Health care services" would mean services provided to an individual by a health care facility or health care provider regardless of the location where those services are provided, including the provision of health care services via telehealth or other remote method.

"Gross negligence" would mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

"Willful misconduct" would mean conduct or a failure to act that was intended to cause harm.

### Liability

Under the proposed Act, a health care provider or health care facility that provided health care services in support of the State's response to the COVID-19 pandemic would not be liable for an injury, including death, sustained by an individual by reason of those services, regardless of how, under what circumstances, or by what cause those injuries were sustained, unless it was established that the provision of the services constituted willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm by the health care provider or health care facility.

The Act would not apply to claims covered by the Worker's Disability Compensation Act.

The liability protection provided by the Act would apply retroactively, and would apply only after March 9, 2020, and before July 15, 2020.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would not increase revenue or costs for the State; however, it could prevent increased costs for local courts by discouraging civil suit filings for medical malpractice arising out of the COVID-19 pandemic.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.