

SENATE, No. 2333

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

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SYNOPSIS

Provides civil and criminal immunity to certain health care professionals and health care facilities during public health emergency and state of emergency; facilitates issuance of certain temporary licenses and certifications during public health emergency and state of emergency.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing immunity from liability for certain claims
2 alleging injury or death during public health emergency and state
3 of emergency and facilitating issuance of temporary licenses and
4 certifications.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. a. As used in this section:

10 “Health care facility” means any healthcare facility as defined in
11 section 2 of P.L.2005, c.222 (C.26:13-2), and any modular field
12 treatment facility and any other site designated by the
13 Commissioner of Health for temporary use for the purpose of
14 providing essential services in support of the State’s response to the
15 outbreak of coronavirus disease during the public health emergency
16 and state of emergency declared by the Governor in Executive
17 Order 103 of 2020.

18 “Health care professional” means a physician, physician
19 assistant, advanced practice nurse, registered nurse, licensed
20 practical nurse, or other health care professional whose professional
21 practice is regulated pursuant to Title 45 of the Revised Statutes or
22 who is otherwise authorized to provide health care services in this
23 State, an emergency medical technician or mobile intensive care
24 paramedic certified by the Commissioner of Health pursuant to
25 Title 26 of the Revised Statutes or who is otherwise authorized to
26 provide health care services in this State, and a radiologic
27 technologist regulated pursuant to Title 26 of the Revised Statutes
28 or who is otherwise authorized to provide health care services in
29 this State.

30 “Scarce critical resource allocation policy” means a policy,
31 protocol or guidelines for the allocation by a health care facility, or
32 a health care system that owns or operates more than one health
33 care facility, of ventilators, intensive care unit beds, or other
34 medical resources or supplies that may be in limited supply and
35 high demand during a public health emergency.

36 b. Notwithstanding the provisions of any law, rule, or
37 regulation to the contrary:

38 (1) a health care professional shall not be liable for civil
39 damages for injury or death alleged to have been sustained as a
40 result of an act or omission by the health care professional in the
41 course of providing medical services in support of the State’s
42 response to the outbreak of coronavirus disease during the public
43 health emergency and state of emergency declared by the Governor
44 in Executive Order 103 of 2020; and (2) a health care facility or a
45 health care system that owns or operates more than one health care
46 facility shall not be liable for civil damages for injury or death
47 alleged to have been sustained as a result of an act or omission by
48 one or more of its agents, officers, employees, servants,

1 representatives or volunteers, if, and to the extent, such agent,
2 officer, employee, servant, representative or volunteer is immune
3 from liability pursuant to paragraph (1) of this subsection.

4 Immunity shall also include any act or omission undertaken in
5 good faith by a health care professional or healthcare facility or a
6 health care system to support efforts to treat COVID-19 patients
7 and to prevent the spread of COVID-19 during the public health
8 emergency and state of emergency declared by the Governor in
9 Executive Order 103 of 2020, including but not limited to engaging
10 in telemedicine or telehealth, and diagnosing or treating patients
11 outside the normal scope of the health care professional's license or
12 practice. The immunity granted pursuant to this subsection shall not
13 apply to acts or omissions constituting a crime, actual fraud, actual
14 malice, gross negligence, recklessness, or willful misconduct, and
15 shall be retroactive to March 9, 2020.

16 c. Notwithstanding the provisions of any law, rule, or
17 regulation to the contrary, a health care facility or a health care
18 system that owns or operates more than one health care facility
19 shall not be criminally or civilly liable for damages for injury or
20 death alleged to have been sustained as a result of an act or
21 omission by the facility or system or one or more of the facility's or
22 system's agents, officers, employees, servants, representatives or
23 volunteers during the public health emergency and state of
24 emergency declared by the Governor in Executive Order 103 of
25 2020 in connection with the allocation of mechanical ventilators or
26 other scarce medical resources, if the health care facility or system
27 adopts and adheres to a scarce critical resource allocation policy
28 that at a minimum incorporates the core principles identified by the
29 Commissioner of Health in an executive directive or administrative
30 order, and the health care facility's or system's agents, officers,
31 employees, servants, representatives and volunteers shall not be
32 civilly or criminally liable for an injury caused by any act or
33 omission pursuant to this subsection during the public health
34 emergency and state of emergency declared by the Governor in
35 Executive Order 103 of 2020 pursuant to, and consistent with, such
36 policy.

37
38 2. During any state of emergency declared pursuant to
39 P.L.1942, c.251 (C.App.A.:9-33 et seq.), or public health
40 emergency declared pursuant to P.L.2005, c.222 (C.26:13-1 et seq.),
41 the Director of the Division of Consumer Affairs within the
42 Department of Law and Public Safety may issue an administrative
43 order to suspend temporarily any provision of Title 45 of the
44 Revised Statutes or suspend or modify temporarily any rule adopted
45 pursuant to such authority concerning the practice of any profession
46 or occupation for which licenses, certificates, registrations, or
47 certifications are issued by the division or any board or other body
48 in the division, or adopt or prescribe temporarily any rule

1 concerning the practice of any profession or occupation for which
2 licenses, certificates, registrations, or certifications are issued by the
3 division or any board or other body in the division, if the director
4 determines, upon concurrence by the Attorney General, that such
5 order is necessary to promote the public welfare and further such
6 other purposes for which the state of emergency or public health
7 emergency was declared. Any administrative order issued by the
8 director pursuant to this section shall cease to apply upon the
9 expiration of the state of emergency or public health emergency, or
10 upon the rescission of the declaration of the state of emergency or
11 public health emergency, and shall not be subject to the
12 requirements of the Administrative Procedure Act, P.L.1968, c.410
13 (C.52:14B-1 et seq.).
14

15 3. a. Notwithstanding any other provision of law to the
16 contrary, for the duration of the state of emergency or the public
17 health emergency declared in response to the COVID-19 pandemic,
18 whichever period of declared emergency is longer, the
19 Commissioner of Health shall be authorized to:

20 (1) issue a provisional certification to any emergency medical
21 technician whose professional certification has expired, regardless
22 of whether the emergency medical technician has satisfied the
23 requirements for reinstatement of an expired certification, provided
24 that the emergency medical technician submits an application for
25 provisional certification that includes such information or
26 attestations as may be required by the commissioner, and the
27 commissioner determines that the application should be granted.
28 The commissioner may require additional showings, such as a
29 demonstration of proficiency, prior to granting such application. A
30 provisional certification issued under this paragraph shall be valid
31 for six months from the date of issuance, unless otherwise
32 determined by the commissioner;

33 (2) issue a provisional certification to any paramedic whose
34 professional certification has expired within the last five years,
35 regardless of whether the paramedic has satisfied the requirements
36 for reinstatement of an expired certification, provided that the
37 paramedic submits an application for provisional certification that
38 includes such information or attestations as may be required by the
39 commissioner, and the commissioner determines that the
40 application should be granted. The commissioner may require
41 additional showings, such as a demonstration of proficiency, prior
42 to granting such application. A provisional certification issued
43 under this paragraph shall be valid for six months from the date of
44 issuance, unless otherwise determined by the commissioner;

45 (3) temporarily reactivate the certification of any paramedic
46 whose certification is currently on inactive status, regardless of
47 whether the paramedic has satisfied the requirements for
48 reactivation of an inactive certification, provided that the paramedic

1 submits an application for reactivation that includes such
2 information or attestations as may be required by the commissioner,
3 and the commissioner determines that the application should be
4 granted. The commissioner may require additional showings, such
5 as a demonstration of proficiency, prior to granting such
6 application. A temporary reactivation issued under this paragraph
7 shall be valid for six months from the date of issuance, unless
8 otherwise determined by the commissioner; and

9 (4) grant temporary reciprocity to any paramedic who is not
10 certified to practice in New Jersey but is either provisionally
11 certified as a paramedic by the National Registry of Emergency
12 Medical Technicians or is certified as a paramedic in any other state
13 or the District of Columbia, provided that the paramedic has not had
14 a paramedic certification revoked by the Department of Health,
15 does not currently have a paramedic certification under suspension
16 by the Department of Health, and satisfies all other requirements as
17 may be provided by the commissioner. A grant of temporary
18 reciprocity issued under this paragraph shall be valid for six months
19 from the date of issuance, unless otherwise determined by the
20 commissioner.

21 b. To facilitate the provisional certification of emergency
22 medical technicians and paramedics, the temporary reactivation of
23 inactive paramedic certifications, and the grant of temporary
24 reciprocity to out-of-State paramedics pursuant to subsection a. of
25 this section, the commissioner is authorized to waive any fees,
26 continuing education requirements, refresher course requirements,
27 periods of provisional certification, required demonstrations of
28 proficiency, endorsement requirements, clinical training
29 requirements, examination requirements, and other requirements
30 that would otherwise apply to recertification of an emergency
31 medical technician or a paramedic whose certification has expired,
32 reactivation of a paramedic certification that has been placed on
33 inactive status, or a grant of reciprocity to an out-of-State
34 paramedic. Waivers of regulations issued pursuant to this
35 subsection shall be valid for six months from the date of issuance,
36 unless otherwise determined by the commissioner.

37
38 4. This act shall take effect immediately and section 1 shall be
39 retroactive to March 9, 2020.

40
41

42 STATEMENT

43

44 This bill would provide immunity from civil and criminal
45 liability for certain malpractice claims alleging injury or death
46 incurred during the public health emergency and state of emergency
47 declared by the Governor's Executive Order 103 of 2020, issued on
48 March 9, 2020. The bill would also authorize temporary

1 reinstatement and recertification of certain professional
2 certifications.

3

4 IMMUNITY FOR HEALTH CARE PROFESSIONALS AND HEALTH CARE
5 FACILITIES AND SYSTEMS

6 Under the bill, (1) a health care professional would not be liable
7 for civil damages for injury or death alleged to have been sustained
8 as a result of an act or omission by the health care professional in
9 the course of providing medical services in support of the State's
10 response to the outbreak of coronavirus disease during the public
11 health emergency and state of emergency declared by the Governor
12 in Executive Order 103 of 2020; and (2) a health care facility or a
13 health care system that owns or operates more than one health care
14 facility would not be liable for civil damages for injury or death
15 alleged to have been sustained as a result of an act or omission by
16 one or more of its agents, officers, employees, servants,
17 representatives or volunteers, if, and to the extent, such agent,
18 officer, employee, servant, representative or volunteer is immune
19 from liability pursuant to the bill.

20 Immunity would also include any act or omission undertaken in
21 good faith by a health care professional or healthcare facility or
22 health care system to support efforts to treat COVID-19 patients
23 and to prevent the spread of COVID-19 during the public health
24 emergency and state of emergency declared by the Governor in
25 Executive Order 103 of 2020, including but not limited to engaging
26 in telemedicine or telehealth, and diagnosing or treating patients
27 outside the normal scope of the health care professional's license or
28 practice. The immunity granted pursuant to this provision would not
29 apply to acts or omissions constituting a crime, actual fraud, actual
30 malice, gross negligence, recklessness, or willful misconduct, and
31 shall be retroactive to March 9, 2020.

32 The bill provides that a health care facility or a health care
33 system that owns or operates more than one health care facility
34 would not be criminally or civilly liable for damages for injury or
35 death alleged to have been sustained as a result of an act or
36 omission by the facility or system or one or more of the facility's or
37 system's agents, officers, employees, servants, representatives or
38 volunteers during the public health emergency and state of
39 emergency declared by the Governor in Executive Order 103 of
40 2020 in connection with the allocation of mechanical ventilators or
41 other scarce medical resources, if the health care facility or system
42 adopts and adheres to a scarce critical resource allocation policy
43 that at a minimum incorporates the core principles identified by the
44 Commissioner of Health in an executive directive or administrative
45 order, and the health care facility's or system's agents, officers,
46 employees, servants, representatives and volunteers would not be
47 civilly or criminally liable for an injury caused by any act or
48 omission pursuant to the bill during the public health emergency

1 and state of emergency declared by the Governor in Executive
2 Order 103 of 2020 pursuant to, and consistent with, such policy.

3

4 LICENSES AND CERTIFICATES FOR PRACTICE OF PROFESSIONS AND
5 OCCUPATIONS

6 Under the bill, during any state of emergency or public health
7 emergency declared pursuant to applicable law, the Director of the
8 Division of Consumer Affairs within the Department of Law and
9 Public Safety may issue an administrative order to suspend
10 temporarily any provision of Title 45 of the Revised Statutes or
11 suspend or modify temporarily any rule adopted pursuant to such
12 authority concerning the practice of any profession or occupation
13 for which licenses, certificates, registrations, or certifications are
14 issued by the division or any board or other body in the division, or
15 adopt or prescribe temporarily any rule concerning the practice of
16 any profession or occupation for which licenses, certificates,
17 registrations, or certifications are issued by the division or any
18 board or other body in the division, if the director determines, upon
19 concurrence by the Attorney General, that such order is necessary to
20 promote the public welfare and further such other purposes for
21 which the state of emergency or public health emergency was
22 declared. Any administrative order issued by the director would
23 cease to apply upon the expiration of the state of emergency or
24 public health emergency, or upon the rescission of the declaration
25 of the state of emergency or public health emergency, and not be
26 subject to the requirements of the Administrative Procedure Act,
27 P.L.1968, c.410 (C.52:14B-1 et seq.).

28

29 TEMPORARY REINSTATEMENT AND REACTIVATION OF EMT AND
30 PARAMEDIC CERTIFICATIONS; TEMPORARY RECIPROCITY.

31 In addition, the bill authorizes the Commissioner of Health, for
32 the duration of the state of emergency or public health emergency
33 declared in response to the coronavirus disease 2019 (COVID-19)
34 pandemic, to issue a provisional certification to any emergency
35 medical technician (EMT) whose certification has expired, issue a
36 provisional certification to any paramedic whose professional
37 certification expired within the past five years, temporarily
38 reactivate the certification of a paramedic that was placed on
39 inactive status within the past five years, and grant temporary
40 reciprocity to certain paramedics licensed in another state or the
41 District of Columbia or who hold a provisional certification issued
42 by the National Registry of Emergency Medical Technicians. The
43 grant of provisional certification, temporary reactivation, or
44 temporary reciprocity will be approved regardless of whether the
45 EMT or paramedic has met the requirements for reinstatement or
46 reactivation of a lapsed professional certificate or a grant of
47 reciprocity.

1 For an EMT or paramedic to qualify for a provisional
2 certification and for a paramedic to qualify for temporary
3 reactivation of an inactive certificate, the EMT or paramedic will be
4 required to submit an application that includes information and
5 attestations as may be required by the commissioner; the
6 commissioner will then determine whether the application should be
7 granted. The EMT or paramedic may be required to make
8 additional showings, including a demonstration of proficiency, as
9 are required by the commissioner. For an out-of-State paramedic
10 to qualify for reciprocity, the bill requires that the paramedic: (1)
11 not have had a paramedic certificate revoked by the Department of
12 Health; (2) not have a paramedic certification currently under
13 suspension by the Department of Health; and (3) satisfy all other
14 requirements as may be provided by the commissioner.

15 To facilitate the provisional certification of EMTs and
16 paramedics, temporary reactivation of inactive paramedic
17 certifications, and grants of temporary reciprocity to out-of-State
18 paramedics under the bill, the commissioner will be authorized to
19 waive, for the duration of the COVID-19 emergency, any fees,
20 continuing education requirements, refresher course requirements,
21 periods of provisional certification, required demonstrations of
22 proficiency, endorsement requirements, clinical training
23 requirements, examination requirements, and other requirements
24 that would otherwise apply to recertification of an emergency
25 medical technician or a paramedic whose certification has expired,
26 reactivation of a paramedic certification that has been placed on
27 inactive status, or a grant of reciprocity to an out-of-State
28 paramedic.

29 A provisional certification, temporary reactivation, or grant of
30 reciprocity issued under the bill will be valid for six months unless
31 otherwise determined by the commissioner. Similarly, waivers
32 issued by the commissioner under the bill will be valid for six
33 months unless otherwise determined by the commissioner.

34

35 EFFECTIVE DATE

36 The bill would take effect immediately, and the immunity
37 provisions of the bill set out in section 1 would be retroactive to
38 March 9, 2020.