Effective 4/22/2020

58-13-2.7 Limited immunity during a declared major public health emergency.

(1) As used in this section:

(a) "Declared major public health emergency" means the same as that term is defined in Section 58-85-106.

(b) "Health care" means the same as that term is defined in Section 78B-3-403.

(c) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(d) "Prescription device" means the same as that term is defined in Section 58-17b-102.

(e) "Prescription drug" means the same as that term is defined in Section 58-17b-102.

(f) "Qualified treatment" means the use of a prescription drug or prescription device:

(i) during a declared major public health emergency;

(ii) to treat a patient who has been diagnosed with the illness or condition that resulted in the declared major public health emergency; and

(iii) that has been approved for sale but not indicated by the United States Food and Drug Administration to treat the illness or condition described in Subsection (1)(f)(ii).

(2)

(a) A health care provider is immune from civil liability for any harm resulting from any act or omission in the course of providing health care during a declared major public health emergency if:

(i)

(A) the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared major public health emergency; or

(B) the act or omission was the direct result of providing health care to a patient for the illness or condition that resulted in the declared major public health emergency; and

(ii) the acts or omissions of the health care provider were not:

(A) grossly negligent; or

(B) intentional or malicious misconduct.

(b) The immunity in Subsection (2)(a) applies:

(i) even if the health care provider has a duty to respond or an expectation of payment or remuneration; and

(ii) in addition to any immunity protections that may apply under state or federal law.

(c) During a declared major public health emergency, it is not a breach of the applicable standard of care for a health care provider to provide health care that is not within the health care provider's education, training, or experience, if:

(i) the health care is within the applicable scope of practice for the type of license issued to the health care provider;

(ii)

(A) the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared major public health emergency; or

(B) there is an urgent shortage of health care providers as a direct result of the declared major public health emergency; and

(iii) providing the health care is not:

(A) grossly negligent; or

(B) intentional or malicious misconduct.

(3)

(a) A health care provider is not subject to civil liability, criminal liability, or sanctions against the health care provider's license for providing a qualified treatment to a patient if:

(i) the qualified treatment is within the scope of the health care provider's license;

(ii) if written recommendations have been issued by a federal government agency regarding the use of the qualified treatment for treatment of the illness or condition that resulted in the declared major public health emergency, the health care provider provides the qualified treatment in accordance with the most current written recommendations issued by the federal government agency;

(iii) the health care provider:

(A) describes to the patient or the patient's representative, based on the health care provider's knowledge of the qualified treatment, the possible positive and negative outcomes the patient could experience if the health care provider treats the patient with the qualified treatment; and

(B) documents in the patient's medical record the information provided to the patient or the patient's representative under Subsection (3)(a)(iii)(A) and whether the patient or the patient's representative consented to the treatment; and

(iv) the acts or omissions of the health care provider were not:

(A) grossly negligent; or

(B) intentional or malicious misconduct.

(b) If two or more written recommendations described in Subsection (3)(a)(ii) are issued by federal government agencies, a health care provider satisfies the requirement described in Subsection (3)(a)(ii) by providing the qualified treatment in accordance with the most current written recommendations of any one federal government agency.

Enacted by Chapter 8, 2020 Special Session 3