

Chapter 13 Health Care Providers Immunity from Liability Act

58-13-1 Title.

This chapter is known as the "Health Care Providers Immunity from Liability Act."

Enacted by Chapter 253, 1996 General Session

58-13-2 Emergency care rendered by licensee.

- (1) A person licensed under Title 58, Occupations and Professions, to practice as any of the following health care professionals, who is under no legal duty to respond, and who in good faith renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable for any civil damages as a result of any acts or omissions by the person in rendering the emergency care:
 - (a) osteopathic physician;
 - (b) physician and surgeon;
 - (c) naturopathic physician;
 - (d) dentist or dental hygienist;
 - (e) chiropractic physician;
 - (f) physician assistant;
 - (g) optometrist;
 - (h) nurse licensed under Section 58-31b-301 or 58-31d-102;
 - (i) podiatrist;
 - (j) certified nurse midwife;
 - (k) respiratory care practitioner;
 - (l) pharmacist, pharmacy technician, and pharmacy intern;
 - (m) direct-entry midwife licensed under Section 58-77-301; or
 - (n) veterinarian.
- (2) This Subsection (2) applies to a health care professional:
 - (a)
 - (i) described in Subsection (1); and
 - (ii) who is under no legal duty to respond to the circumstances described in Subsection (3);
 - (b) who is:
 - (i)
 - (A) activated as a member of a medical reserve corps as described in Section 26A-1-126 during the time of an emergency or declaration for public health related activities as provided in Subsection 26A-1-126(2); or
 - (B) participating in training to prepare the medical reserve corps to respond to a declaration of an emergency or request for public health related activities pursuant to Subsection 26A-1-126(2);
 - (ii) acting within the scope of:
 - (A) the health care professional's license; or
 - (B) practice as modified under Subsection 58-1-307(4) or Section 26A-1-126; and
 - (iii) acting in good faith without compensation or remuneration as defined in Subsection 58-13-3(2); or
 - (c) who is acting as a volunteer health practitioner under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

- (3) A health care professional described in Subsection (2) is not liable for any civil damages as a result of any acts or omissions by the health care professional in rendering care as a result of:
 - (a) implementation of measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
 - (b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and
 - (c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.
- (4) The immunity in Subsection (3) is in addition to any immunity or protection in state or federal law that may apply.
- (5) For purposes of Subsection (2)(b)(iii) remuneration does not include:
 - (a) food supplied to the volunteer;
 - (b) clothing supplied to the volunteer to help identify the volunteer during the time of the emergency; or
 - (c) other similar support for the volunteer.

Amended by Chapter 44, 2013 General Session

58-13-2.5 Standard of proof for emergency care when immunity does not apply.

- (1) A person who is a health care provider as defined in Section 78B-3-403 who provides emergency care in good faith, but is not immune from suit because of an expectation of payment, a legal duty to respond, or other reason under Section 58-13-2, may only be liable for civil damages if fault, as defined in Section 78B-5-817, is established by clear and convincing evidence.
- (2) For purposes of Subsection (1), "emergency care" means the treatment of an emergency medical condition, as defined in Section 31A-22-627, from the time that the person presents at the emergency department of a hospital and including any subsequent transfer to another hospital, until the condition has been stabilized and the patient is either discharged from the emergency department or admitted to another department of the hospital.
- (3) This section does not apply to emergency care provided by a physician if:
 - (a) the physician has a previously established physician/patient relationship with the patient outside of the emergency room;
 - (b) the patient has been seen in the last three months by the physician for the same condition for which emergency care is sought; and
 - (c) the physician can access and consult the patient's relevant medical care records while the physician is making decisions about and providing the emergency care.
- (4)
 - (a) Nothing in this section may be construed as:
 - (i) altering the applicable standard of care for determining fault; or
 - (ii) applying the standard of proof of clear and convincing evidence to care outside of emergency care and the mandatory legal duty to treat.
 - (b) This section applies to emergency care given after June 1, 2009.
- (5) This section sunsets in accordance with Section 63I-1-258.

Enacted by Chapter 14, 2009 General Session

58-13-2.6 Emergency care rendered by a person or health care facility.

- (1) For purposes of this section:
 - (a) "Emergency" means an unexpected occurrence involving injury, the threat of injury, or illness to a person or the public due to:
 - (i) a natural disaster;
 - (ii) bioterrorism;
 - (iii) an act of terrorism;
 - (iv) a pandemic; or
 - (v) other event of similar nature.
 - (b) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.
 - (c) "Person" is defined in Subsection 26-21-2(18).
- (2)
 - (a) A person who, in good faith, assists governmental agencies or political subdivisions with the activities described in Subsection (2)(b) is not liable for civil damages or penalties as a result of any act or omission unless the person rendering the assistance:
 - (i) is grossly negligent;
 - (ii) caused the emergency; or
 - (iii) has engaged in criminal conduct.
 - (b) The following activities are protected from liability in accordance with Subsection (2)(a):
 - (i) implementing measures to control the causes of epidemic, pandemic, communicable diseases, or other conditions significantly affecting public health, as necessary to protect the public health in accordance with Title 26A, Chapter 1, Local Health Departments;
 - (ii) investigating, controlling, and treating suspected bioterrorism or disease in accordance with Title 26, Chapter 23b, Detection of Public Health Emergencies Act;
 - (iii) responding to:
 - (A) a national, state, or local emergency;
 - (B) a public health emergency as defined in Section 26-23b-102; or
 - (C) a declaration by the President of the United States or other federal official requesting public health related activities; and
 - (iv) providing a facility for use by a governmental agency or political subdivision to distribute pharmaceuticals or administer vaccines to the public.
 - (c) Subsection (2)(a) applies to a person even if that person has:
 - (i) a duty to respond; or
 - (ii) an expectation of payment or remuneration.
- (3) The immunity in Subsection (2) is in addition to any immunity protections that may apply in state or federal law.

Amended by Chapter 76, 2008 General Session

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

58-13-3 Qualified immunity -- Health professionals -- Charity care.

- (1)
 - (a)
 - (i) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost.
 - (ii) The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.
 - (b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.
- (2) As used in this section:
 - (a) "Continuing education requirement" means the requirement for hours of continuing education, established by the division, with which a health care professional must comply to renew the health care professional's license under the applicable chapter described in Subsection (2)(c).
 - (b) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.
 - (c) "Health care professional" means a person licensed under:
 - (i) Chapter 5a, Podiatric Physician Licensing Act;
 - (ii) Chapter 16a, Utah Optometry Practice Act;
 - (iii) Chapter 17b, Pharmacy Practice Act;
 - (iv) Chapter 24b, Physical Therapy Practice Act;
 - (v) Chapter 31b, Nurse Practice Act;
 - (vi) Chapter 40, Recreational Therapy Practice Act;
 - (vii) Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
 - (viii) Chapter 42a, Occupational Therapy Practice Act;
 - (ix) Chapter 44a, Nurse Midwife Practice Act;
 - (x) Chapter 49, Dietitian Certification Act;
 - (xi) Chapter 60, Mental Health Professional Practice Act;
 - (xii) Chapter 67, Utah Medical Practice Act;

- (xiii)Chapter 68, Utah Osteopathic Medical Practice Act;
 - (xiv)Chapter 69, Dentist and Dental Hygienist Practice Act;
 - (xv)Chapter 70a, Utah Physician Assistant Act;
 - (xvi)Chapter 71, Naturopathic Physician Practice Act; and
 - (xvii)Chapter 73, Chiropractic Physician Practice Act.
- (d) "Remuneration or compensation":
- (i)
 - (A) means direct or indirect receipt of any payment by a health care professional or health care facility on behalf of the patient, including payment or reimbursement under Medicare or Medicaid, or under the state program for the medically indigent on behalf of the patient; and
 - (B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and
 - (ii) does not mean:
 - (A) any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as:
 - (I) medical supplies;
 - (II) drugs; or
 - (III) a charitable donation that is restricted for charitable services at the health care facility; or
 - (B) incidental reimbursements to the volunteer such as:
 - (I) food supplied to the volunteer;
 - (II) clothing supplied to the volunteer to help identify the volunteer during the time of volunteer services;
 - (III) mileage reimbursement to the volunteer; or
 - (IV) other similar support to the volunteer.
- (3) A health care professional who provides health care treatment at or on behalf of a health care facility is not liable in a medical malpractice action if:
- (a) the treatment was within the scope of the health care professional's license under this title;
 - (b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;
 - (c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
 - (d) prior to rendering services:
 - (i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and
 - (ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.
- (4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:
- (a) the health care facility meets the requirements in Subsection (3)(b);
 - (b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and
 - (c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

- (5) A health care professional who provides health care treatment at a federally qualified health center, as defined in Subsection 1905(1)(2)(b) of the Social Security Act, or an Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health Care Improvement Act, is not liable in a medical malpractice action if:
 - (a) the treatment was within the scope of the health care professional's license under this title;
 - (b) the health care professional:
 - (i) does not receive compensation or remuneration for treatment provided to any patient that the provider treats at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center; and
 - (ii) is not eligible to be included in coverage under the Federal Tort Claims Act for the treatment provided at the federally qualified health center, the Indian health clinic, or the Urban Indian Health Center;
 - (c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and
 - (d) prior to rendering services:
 - (i) the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation; and
 - (ii) the patient consented in writing to waive any right to sue for professional negligence except for acts or omissions that are grossly negligent or are willful and wanton.
- (6) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
- (7) The provisions of Subsection (5) apply to treatment provided by a healthcare professional on or after May 13, 2014.
- (8) A health care professional:
 - (a) may, in accordance with Subsection (8)(b), fulfill up to 15% of the health care professional's continuing education requirement with hours the health care professional spends providing health care treatment described in Subsection (3) or (5); and
 - (b) subject to Subsection (8)(a), earns one hour of the health care professional's continuing education requirement for every four documented hours of volunteer health care treatment.

Amended by Chapter 108, 2016 General Session

Amended by Chapter 238, 2016 General Session

58-13-4 Liability immunity for health care providers on committees -- Evaluating and approving medical care.

- (1) As used in this section, "health care provider" has the same meaning as in Section 78B-3-403.
- (2) Health care providers serving in the following capacities and the organizations or entities sponsoring these activities are immune from liability with respect to deliberations, decisions, or determinations made or information furnished in good faith and without malice:
 - (a) serving on committees:
 - (i) established to determine if hospitals and long-term care facilities are being used properly;
 - (ii) established to evaluate and improve the quality of health care or determine whether provided health care was necessary, appropriate, properly performed, or provided at a reasonable cost;
 - (iii) functioning under Pub. L. No. 89-97 or as professional standards review organizations under Pub. L. No. 92-603;

- (iv) that are ethical standards review committees; or
 - (v) that are similar to committees listed in this Subsection (2) and that are established by any hospital, professional association, the Utah Medical Association, or one of its component medical societies to evaluate or review the diagnosis or treatment of, or the performance of health or hospital services to, patients within this state;
 - (b) members of licensing boards established under Title 58, Occupations and Professions, to license and regulate health care providers; and
 - (c) health care providers or other persons furnishing information to those committees, as required by law, voluntarily, or upon official request.
- (3) This section does not relieve any health care provider from liability incurred in providing professional care and treatment to any patient.
- (4) Health care providers serving on committees or providing information described in this section are presumed to have acted in good faith and without malice, absent clear and convincing evidence to the contrary.

Amended by Chapter 3, 2008 General Session

58-13-5 Information relating to adequacy and quality of medical care -- Immunity from liability.

- (1) As used in this section, "health care provider" has the same meaning as defined in Section 78B-3-403.
- (2)
- (a) The division, and the boards within the division that act regarding the health care providers defined in this section, shall adopt rules to establish procedures to obtain information concerning the quality and adequacy of health care rendered to patients by those health care providers.
 - (b) It is the duty of an individual licensed under Title 58, Occupations and Professions, as a health care provider to furnish information known to him with respect to health care rendered to patients by any health care provider licensed under Title 58, Occupations and Professions, as the division or a board may request during the course of the performance of its duties.
- (3) A health care facility as defined in Section 26-21-2 which employs, grants privileges to, or otherwise permits a licensed health care provider to engage in licensed practice within the health care facility, and any professional society of licensed health care providers, shall report any of the following events in writing to the division within 60 days after the event occurs regarding the licensed health care provider:
- (a) terminating employment of an employee for cause related to the employee's practice as a licensed health care provider;
 - (b) terminating or restricting privileges for cause to engage in any act or practice related to practice as a licensed health care provider;
 - (c) terminating, suspending, or restricting membership or privileges associated with membership in a professional association for acts of unprofessional, unlawful, incompetent, or negligent conduct related to practice as a licensed health care provider;
 - (d) subjecting a licensed health care provider to disciplinary action for a period of more than 30 days;
 - (e) a finding that a licensed health care provider has violated professional standards or ethics;
 - (f) a finding of incompetence in practice as a licensed health care provider;
 - (g) a finding of acts of moral turpitude by a licensed health care provider; or
 - (h) a finding that a licensed health care provider is engaged in abuse of alcohol or drugs.

- (4) This section does not prohibit any action by a health care facility, or professional society comprised primarily of licensed health care providers to suspend, restrict, or revoke the employment, privileges, or membership of a health care provider.
- (5) The data and information obtained in accordance with this section is classified as a "protected" record under Title 63G, Chapter 2, Government Records Access and Management Act.
- (6)
 - (a) Any person or organization furnishing information in accordance with this section in response to the request of the division or a board, or voluntarily, is immune from liability with respect to information provided in good faith and without malice, which good faith and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.
 - (b) The members of the board are immune from liability for any decisions made or actions taken in response to information acquired by the board if those decisions or actions are made in good faith and without malice, which good faith and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.
- (7) An individual who is a member of a hospital administration, board, committee, department, medical staff, or professional organization of health care providers, and any hospital, other health care entity, or professional organization conducting or sponsoring the review, is immune from liability arising from participation in a review of a health care provider's professional ethics, medical competence, moral turpitude, or substance abuse.
- (8) This section does not exempt a person licensed under Title 58, Occupations and Professions, from complying with any reporting requirements established under state or federal law.

Amended by Chapter 278, 2013 General Session