

1 **EMERGENCY HEALTH CARE ACCESS AND IMMUNITY**

2 **AMENDMENTS**

3 2020 THIRD SPECIAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Evan J. Vickers**

6 House Sponsor: Val L. Peterson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill expands access to certain treatments and creates limited immunity for certain
11 actions during a declared major public health emergency.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ provides limited immunity for health care, including the use of certain treatments,
16 provided during a major public health emergency;

17 ~~↔ [→ provides limited immunity for providing assistance to a state agency to provide a~~
18 ~~qualified treatment during a major public health emergency;]~~ ↔

- 19 ▶ amends the Utah Right to Try Act to permit the use of certain investigational drugs
20 and devices during a major public health emergency; and
- 21 ▶ creates limited immunity for health care providers who provide an investigational
22 drug or device to a patient during a major public health emergency.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**



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

60 (i) even if the health care provider has a duty to respond or an expectation ~~§~~→ [or] of ~~←~~←§
60a payment

61 or remuneration; and

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

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

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

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

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

72 (iii) providing the health care is not:

73 (A) grossly negligent; or

74 (B) intentional or malicious misconduct.

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

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

79 (ii) if written recommendations have been issued by a ~~§~~→ [state or] ~~←~~←§ federal government
80 agency regarding the use of the qualified treatment for treatment of the illness or condition that
81 resulted in the declared major public health emergency, the health care provider provides the
82 qualified treatment in accordance with the most current written recommendations issued by the
83 ~~§~~→ [state or] ~~←~~←§ federal government agency;

83a ~~§~~→ (iii) the health care provider ~~Ĥ~~→ [provides the patient or the patient's representative with an
83b informed consent document that;] :

83ba (A) describes to the patient or the patient's representative, ~~←~~←Ĥ based on the health care
83bb provider's knowledge of the qualified

83c treatment, ~~Ĥ~~→ [describes] ~~←~~←Ĥ the possible positive and negative outcomes the patient could
83ca experience if

83d the health care provider treats the patient with the qualified treatment; and ~~←~~←§

83e ~~Ĥ~~→ (B) documents in the patient's medical record the information provided to the patient
83f or the patient's representative under Subsection (3)(a)(iii)(A) and whether the patient or the

83g patient's representative consented to the treatment; and ~~←~~←Ĥ

84 ~~§~~→ [(iii)] (iv) ~~←~~←§ the acts or omissions of the health care provider were not:

85 (A) grossly negligent; or ↻

86 ~~(B)~~ intentional or malicious misconduct.
87 (b) If two or more written recommendations described in Subsection (3)(a)(ii) are
88 issued by ~~§~~ [Utah or] ~~§~~ federal government agencies, a health care provider satisfies the
88a requirement
89 described in Subsection (3)(a)(ii) by providing the qualified treatment in accordance with the

90 most current written recommendations of any one ~~§~~ [Utah or] ~~§~~ federal government agency.

91 ~~§~~ [(4)(a) A person is immune from civil liability for providing assistance to an agency of
 92 the state to manufacture, distribute, dispense, administer, or provide a qualified treatment
 93 during a declared major public health emergency if the assistance is provided under contract
 94 with and under the direction of the state agency.

95 — (b) Subsection (4)(a) does not apply if:

96 — (i) the harms are the result of:

97 — (A) gross negligence; or

98 — (B) intentional or malicious misconduct; or

99 — (ii) an act or omission by the person caused ~~§~~, ~~§~~ in whole or in part ~~§~~, ~~§~~ the
 99a ~~§~~ declared ~~§~~ major public health

100 emergency, and the person would otherwise be liable for the harms.] ~~§~~

101 Section 2. Section **58-85-106** is enacted to read:

102 **58-85-106. Use of investigational drugs and devices during a major public health**
 103 **emergency -- Limitations -- Immunity.**

104 (1) As used in this section:

105 (a) "Declared major public health emergency" means a state of emergency declared by
 106 the governor under Section 53-2a-206 as the result of a major public health emergency.

107 (b) "Health care provider" means the same as that term is defined in Section
 108 76B-3-403.

109 (c) "Insurer" means the same as that term is defined in Section 31A-22-634.

110 (d) "Major public health emergency" means an occurrence of imminent threat of an
 111 illness or health condition that:

112 (i) is believed to be caused by:

113 (A) bioterrorism;

114 (B) the appearance of a novel or previously controlled or eradicated infectious agent or
 115 biological toxin;

116 (C) a natural disaster;

117 (D) a chemical attack or accidental release; or

118 (E) a nuclear attack or accident; and

119 (ii) poses a high probability of:

120 (A) a large number of deaths in the affected population;