

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 107 By Senator Cheek

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

HEALTH CARE. Provides for the Uniform Emergency Volunteer Health Practitioners Act. (8/15/09)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Clarifies that a person receiving services from a volunteer health practitioner under proposed law not be required to pay, directly or indirectly, for the health services.
2. Requires that an order regulating services during an emergency be promulgated as an emergency rule under the Administrative Procedures Act.
3. Adds provisions regarding the limitations on liability being effective only during the time period set forth in the initial declaration and that they be retroactive to the precipitating event requiring the declaration of disaster or public emergency and for a period of 30 days following the end of the initial declared state of emergency. Provides for continuation of the initial state of emergency as declared by the governor.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

Proposed law provides for the "Uniform Emergency Volunteer Health Practitioners Act."

Proposed law defines "affiliate," "declared emergency," "disaster preparedness or relief organization," "emergency declaration," "emergency management assistance compact," "entity," "health facility," "health practitioner," "health services," "host entity," "license," "license in good standing," "licensed in good standing," "person," "secure registration card," "scope of practice," "state," "state licensing authority," and "volunteer health practitioner."

Proposed law defines a "volunteer health practitioner" to mean a health practitioner who provides health services in this state for a host entity, whether or not the practitioner receives compensation for those services as long as the person receiving the health services does not pay and is not asked, directly or indirectly, to pay for the services. Provides that the term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster preparedness or relief organization providing services in this state while an emergency declaration is in effect nor does the term does include a practitioner who only provides veterinary services.

Proposed law provides that while an emergency declaration is in effect, DHH may limit, restrict, or otherwise regulate:

- (1) The duration of practice by volunteer health practitioners.
- (2) The geographical areas in which volunteer health practitioners may practice.
- (3) The types of volunteer health practitioners who may practice.
- (4) Any other matters necessary to coordinate effectively the provision of health services during the emergency.

Proposed law provides that an order issued pursuant to proposed law may take effect immediately and requires that it be promulgated as an emergency rule under the APA.

Proposed law provides that a host entity that uses volunteer health practitioners to provide health services in this state shall:

- (1) Consult and coordinate its activities with DHH, to the extent practical, to provide for the efficient and effective use of volunteer health practitioners.
- (2) Verify the identity of the volunteer health practitioner.
- (3) Confirm that the volunteer health practitioner is registered with a registration system that complies with proposed law.
- (4) Confirm that the registration system has verified the accuracy of information concerning whether a health practitioner meets the requirements of proposed law.
- (5) Confirm that the volunteer health practitioner has not had a license revoked, suspended or placed under the terms, conditions or restrictions in any state according to the National Practitioner Data Bank which shall be queried before the volunteer health practitioner is permitted to begin work or as soon thereafter as is possible under the circumstances.
- (6) Notify the state licensing authority of any adverse action against the volunteer's privileges.
- (7) Comply with any laws relating to the management of emergency health services.

Proposed law provides that a host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner holds a license in good standing.

Proposed law provides that to qualify as a volunteer health practitioner registration system, a system shall:

- (1) Accept applications for the registration of volunteer health practitioners before or during an emergency.
- (2) Include information about the licensure and good standing of health practitioners which is accessible by authorized persons.
- (3) Be capable of verifying the accuracy of information concerning whether a health practitioner meets the requirements of proposed law.
- (4) Meet one of the following conditions:
 - (a) Be an emergency system for advance registration of volunteer healthcare practitioners established by a state and funded through the Department of Health and Human Services under Section 3191 of the Public Health Services Act, 42 U.S.C. 247d-7b.
 - (b) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to Section 2801 of the Public Health Services Act, 42 U.S.C. 300hh.
 - (c) Be operated by or under the direction of a disaster preparedness or relief organization, a state licensing authority, a national or regional association of licensing boards or health practitioners, a health facility that provides comprehensive inpatient and outpatient health-care services, or a governmental entity.
 - (d) Be designated by DHH as a registration system.

Proposed law provides that upon request of GOSEP, DHH, a state licensing authority, or a host entity in this state or a similarly authorized entity in another state, a registration system located in this state shall notify the entity of the identities of the volunteer health practitioners registered with it and whether the practitioners are licensed and in good standing.

Proposed law provides that while an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by proposed law as if the practitioner were licensed in this state.

Proposed law provides that a volunteer health practitioner qualified under proposed law is not entitled to the protections of proposed law and shall not be authorized to practice in this state if any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

Proposed law provides that each health practitioner who provides health services in this state pursuant to authority of the Emergency Management Assistance Compact shall register with a registration system that complies with proposed law as a volunteer health practitioner authorized to provide health services in this state pursuant to the Emergency Management Assistance Compact.

Proposed law does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

Proposed law provides that a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

Proposed law does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

Proposed law provides that DHH, or a state licensing authority may modify or restrict the health services that volunteer health practitioners may provide pursuant to proposed law.

Proposed law provides that a host entity may restrict the health services that a volunteer health practitioner may provide.

Proposed law provides that a volunteer health practitioner shall not be deemed to engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under proposed law or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner shall be deemed to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if either of the following conditions is met:

- (1) The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.
- (2) From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

Proposed law provides a state licensing authority for due cause under its applicable laws and rules:

- (1) May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency.

- (2) May impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency.
- (3) Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

Proposed law provides that in determining whether to impose administrative sanctions under proposed law, a state licensing authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

Proposed law provides that administrative sanctions may include, but are not limited to, the restriction, suspension, or revocation of authority to provide health services in this state.

Proposed law provides that any administrative sanction imposed on the authority of a health practitioner to practice during a declared emergency under the provisions of proposed law shall be carried out in the following manner:

- (1) Registration to provide health services in this state during a declared emergency shall constitute and operate as an authorization and consent by a volunteer health practitioner to submission to the jurisdiction of the state licensing authority, to produce documents, records, and materials and appear before the state licensing authority or its designee upon request, to immediately restrict or cease, desist, and withdraw from providing health services in this state upon notification by the state licensing authority of a restriction, suspension, or revocation of authority to provide such services, and to designate and appoint the voluntary health practitioner registration system providing notice of registration to the state licensing authority, or a host entity, hospital or affiliate for or at which he or she may be providing services, to receive any notice provided by a state licensing authority.
- (2) Any notice under proposed law may be provided orally, in writing, electronically, or by any other means practical under the circumstances, to either the health practitioner, the voluntary health practitioner registration system providing notification of registration to the state licensing authority, a host entity, or a hospital or affiliate for or at which the health practitioner may be providing services.
- (3) All rights to a hearing on administrative sanctions imposed by a state licensing authority shall be held in abeyance until no less than 30 days after the termination of the declared emergency.
- (4) A health practitioner may request an explanation for administrative sanctions on his or her authority to practice or a hearing by the state licensing authority or both, following termination of the emergency declaration, or as otherwise may be provided by applicable emergency orders.
- (5) In the event a hearing is not requested within 60 days following the date of termination of the emergency declaration, or as otherwise may be provided by applicable emergency orders, administrative sanctions imposed by the state licensing authority shall be deemed to constitute a final order or decision of such authority.

Proposed law does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than proposed law. The provisions of proposed law do not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

Proposed law provides that DHH, and state licensing authorities may promulgate rules in accordance with the APA to implement proposed law. In doing so, DHH and state licensing authorities shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of proposed law and make the emergency response systems in the various states reasonably compatible.

Proposed law provides that, except for certain circumstances, a volunteer health practitioner who provides health services pursuant to proposed law shall not be liable for damages for an act or omission of the practitioner in providing those services.

Proposed law provides that no person shall be vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under proposed law.

Proposed law does not limit the liability of a volunteer health practitioner for any of the following:

- (1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.
- (2) An intentional tort.
- (3) A breach of contract.
- (4) A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner.
- (5) An act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

Proposed law provides that no person that operates, uses, or relies upon information provided by a volunteer health practitioner registration system shall be liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

Provides that limitations on liability contained in proposed law are only effective during the time period set forth in the initial declaration and are retroactive to the precipitating event requiring the declaration of disaster or public emergency and for a period of 30 days following the end of the initial declared state of emergency. Provides that, if prior to the expiration of 30 days following the end of the initial declared state of emergency, the governor specifically declares that a public health emergency continues to exist then the limitations on liability shall continue to remain in effect during the time period established by the governor in his declaration.

Proposed law shall be construed so as to effectuate its general purpose to make uniform the law of those states which enact it.

Effective August 15, 2009.

(Adds R.S. 29:781-792; repeals R.S. 29:735.2(A))

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