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Maryland Chapter
AMERICAN COLLEGE OF
EMERGENCY PHYSICIANS



Maryland Association of
Resources for Families & Youth

TO: The Honorable William C. Smith, Jr., Chair
Members, Senate Judicial Proceedings Committee
The Honorable Shelly Hettleman

FROM: J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman

DATE: February 2, 2021

RE: **SUPPORT** – Senate Bill 311 – *Catastrophic Health Emergencies - Health Care Providers - Definition and Immunity (Maryland Health Care Heroes Protection Act)*

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, the Maryland Chapter of the American Academy of Pediatrics, the Mid-Atlantic Association of Community Health Centers, the LifeSpan Network, and the Maryland Association of Resources for Families & Youth, we submit this letter of **support** for **Senate Bill 311**.

Senate Bill 311 makes important changes to the statute governing the Governor's Health Emergency Powers (Title 14, Subtitle 3a of the Public Safety Article). First, it expands the definition of health care provider under this section of the law to include an employee, agent or contractor of a health care facility who provides or assists with the delivery of health care. Second, it amends existing law governing civil and criminal immunity for those health care providers who provide or assist in providing health care related to the health care emergency declared by the Governor, and who have acted in good faith. It also clarifies that this immunity extends to acts directly or indirectly related to the Governor's proclamation. Finally, it provides that immunity determinations under this section of the law are immediately appealable.

Health care providers and facilities have for every minute of every day of every week for almost a year, responded to the overwhelming flood of patients suffering from COVID-19. They have faced the risks that come with this response, and fought through fatigue, staffing shortages, supply shortages, and ever-changing health care orders and directives governing their daily procedures. At the same time, the flow of patients seeking needed care for other ailments or injuries did not cease, though the pace did slow due to patient fears of becoming infected with COVID and due to orders ceasing elective procedures and other non-urgent visits. The tumult has revealed legal vulnerabilities for providers and facilities alike that Senate Bill 311 seeks to address.

The Maryland Department of Health's Orders have stated that the immunity provisions of the existing law do not "apply to a healthcare provider or facility performing non-COVID-19 related procedures or appointments." This limits the scope of the immunity protections provided by the existing statute and sets up a distinction among patients that in the daily reality of a pandemic does not exist. The pandemic affected all patients, providers and facilities, even non-COVID patients who perhaps needed to visit to a physician, undergo a procedure, or obtain needed medical equipment that were not available due to reasons that *were* COVID related. There were supply

and personnel shortages and other factors present that affected everyone, not just COVID-19 patients. This artificial divide among patients is not what was intended by the General Assembly in our view and needs to be addressed in the manner set forth in Senate Bill 311.

Health care providers and facilities have done their absolute best during this difficult time. They have, as the bill requires, acted in good faith. They deserve protection from lawsuits that might arise during the pandemic and be brought in the years that follow. And to be clear, where providers and facilities have been shown not to have acted in good faith, nothing in Senate Bill 311 precludes an appropriate lawsuit. But we cannot have these health care heroes emerge from the herculean efforts they have extended over the last year and are still extending today, only to face lawsuits that are unwarranted under these tragic circumstances.

For these reasons, all of the above organizations ask for your support of Senate Bill 311.

For more information call:

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