



Utah Medical Association  
*Still the greatest profession.*

April 20, 2020

## Information on S.B. 3002

### Emergency Health Care Access and Immunity Amendments

The Utah Medical Association has been pushing both the Governor and the Legislature to provide special immunity provisions to providers, and of course, specifically to physicians during the COVID-19 pandemic. This past week, on Friday, April 17th, the legislature in special session passed S.B. 3002 - Emergency Health Care Access and Immunity Amendments. Thank you to all who contacted your legislators at our request about this bill.

The bill does four things:

1. It makes a physician (and the other providers) immune for civil liability for any harm resulting from: a) an act or omission in the course of providing health care, in Utah, during a declared major public health emergency if the care is provided in good faith to treat the patient for the condition or illness that resulted in the emergency (in this case COVID-19); or, b) the act or omission was the direct result of providing health care to a patient for the declared public health emergency. In both cases, the acts or omissions cannot be grossly negligent or intentional or malicious misconduct.
2. A physician is also protected during this public health emergency if the care provided by that physician is outside of applicable standard of care for that physician as long as that care is within a physician's scope of practice. In the state of Utah, all medical care activities are covered under an MD or DO license but standard of care has been limited to what is allowed by hospital or insurance credentialing, or by DOPL based on training (specialty) and typical standard of care - such as not allowing a family practitioner to do heart surgery. Under this new law, during the public health emergency, activities by a physician in any care setting and in any area as required to treat COVID patients are included if the care is provided in good faith to treat the patient for COVID or there is an urgent shortage of health care providers because of the declared public health emergency (which for this declared emergency is COVID care).
3. A physician is not subject to civil or criminal liability or sanctions against a license if the care is not gross negligence or intentional or malicious misconduct and the physician is providing a "qualified treatment" (an FDA-approved drug or device that is off-label for the illness or condition – in this case COVID-19), if the qualified treatment is within the physicians scope of practice under their license and if the treatment has a written recommendation by a federal government agency regarding the use of the qualified treatment for the illness or condition (again, in this case COVID-19). Other requirements for this section include that the qualified treatment must follow the most current written recommendation by the Federal government, that the physician describes the possible positive and negative outcomes the patient may experience and then documents in the medical record the information provided to the patient or the patient's representative and they consented to the treatment.

4. For an investigational drug or device (such as hydroxychloroquine, chloroquine, remdesivir or other for COVID), a patient may obtain an investigational drug through an agreement with the investigational drug's manufacturer and the qualified patient's physician provides for the transfer of the investigational drug from the manufacturer to the physician and the physician administers the investigational drug to the qualified patient. The agreement must include an informed consent document, that based on the physician's knowledge of the investigational drug, that describes: a) possible positive and negative outcomes if treated with the drug; b) states that insurer is not required to cover the cost of providing the investigational drug; c) states that an insurer may deny coverage for the qualified patient; and, d) states that the patient may be liable for all expenses caused by the physician treating the patient with the investigational drug unless the agreement provides otherwise. The physician must also notify the patient's insurer of a) the investigational drug the physician treated the patient with; b) the date this was done; and c) that the drug was used under an agreement described above. The bill also states that it is not a breach of the applicable standard of care to treat a qualified patient under this section. It does not create a private right of action by a patient for a physician to refuse to treat with an investigational drug.

These immunity provisions apply even if a physician has expectation of payment for services. Unfortunately, what did not get into the bill was immunity for omission of care, elective procedures and surgeries. As a physician you must make a decision on what care a patient must receive, based on your medical judgement. Remember to also document very carefully in your patient's medical records, the reason for care or omission of care.

Author: UMA CEO Michelle S. McOmber, MBA CAE  
Date: 4/20/2020