



MASSACHUSETTS MEDICAL SOCIETY

Every physician matters, each patient counts.

April 8, 2020

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The Honorable Robert A. DeLeo
Speaker, Massachusetts House of Representatives
State House, Room 356
Boston, MA 02133

Dear Mr. Speaker:

On behalf of the Massachusetts Medical Society, representing over 25,000 physicians, residents, and medical students in the Commonwealth we want to thank you for your leadership in addressing the COVID-19 pandemic, especially as it pertains to supporting frontline health care workers.

As you know, the COVID-19 pandemic has overwhelmed our health care system and severely constrained medical resources, including the health care workforce. Steps have been taken to maximize the physician workforce to meet increased demand, but additional physicians will be needed. Legal liability remains a significant obstacle for those considering how best to offer their services. **We respectfully request the immediate passage of S.2630, *An Act to Provide Liability Protections for Health Care Workers and facilities during the COVID-19 Pandemic*, providing immunity from civil liability, absent gross negligence or other willful misconduct, for physicians and other health care providers and facilities providing medical care for the duration of the COVID-19 public health emergency.**

During this unprecedented crisis, physicians are providing care under extreme circumstances that may require challenging and painful decisions about how to allocate limited and potentially life-saving resources. As such, physicians fear an unreasonable increase in civil liability exposure that does not appropriately reflect the provision of care and clinical decisions made in a crisis situation due to patient surge or scarcity of resources. Although some state and federal liability protections exist for volunteers responding to this pandemic, these enhanced liability protections do not apply to most paid physicians. At this critical time, we must empower physicians to make difficult decisions that provide the best patient care possible under the most demanding circumstances while not later penalizing them through tort provisions not written in contemplation of such a crisis.

These extreme circumstances have prompted the development of crisis standards of care in Massachusetts that are primarily aimed at helping healthcare institutions and providers make consistent, ethical decisions about the use and allocation of scarce medical resources across the system. Implementing crisis standards of care supports physicians in making medical decisions, but it does not adequately shield them from liability associated with providing care under such extreme circumstances. Establishing a standard of gross negligence is clearer and not as variable as one based on a shifting standard of care, and it strikes an important balance, addressing unprecedented needs while still protecting patients.

Similar executive action has been taken by New York, the epicenter of the pandemic in the United States, and over a dozen other states have statutes with similar effect limiting liability in a public health emergency. We hope Massachusetts will follow suit and protect physicians and health care professionals as they work overtime to care for patients and the public health.

Sincerely,

Maryanne C. Bombaugh, MD, MSc, MBA, FACOG