

2020 Second Extraordinary Session

SENATE BILL NO. 12

BY SENATOR ROBERT MILLS AND REPRESENTATIVE EDMONDS

HEALTH CARE. Provides access for patients of hospitals and residents of nursing homes, assisted living facilities, and other adult residential care homes to members of the clergy who volunteer to minister and provide religious sacraments and services, counseling, and mental health support during COVID-19 and other public health emergencies. (gov sig) (Item #28)

1 AN ACT  
2 To amend and reenact the introductory paragraph of R.S. 29:762 and (7) through (16), the  
3 heading of R.S. 29:770 and (B), and 771(B)(2)(c) and to enact R.S. 29:762(17) and  
4 (18) and 770(C), relative to a state of public health emergency; to require hospitals,  
5 nursing homes, and adult residential care homes to provide patient or resident access  
6 to members of the clergy during a state of public health emergency for COVID-19  
7 or other contagious or infectious diseases; to permit patient or resident access to  
8 religious sacraments and services; to provide requirements for members of the clergy  
9 who voluntarily enter inpatient health care facilities to minister; to provide for  
10 definitions; to provide for mental health support; to provide for legislative purpose;  
11 to provide for the protection of employment and contracting rights for clergy who  
12 refuse to enter the inpatient health care facilities at certain times; to provide for  
13 immunity from liability for hospitals, nursing homes, and adult residential care  
14 homes; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. The introductory paragraph of R.S. 29:762 and (7) through (16), the  
17 heading of R.S. 29:770 and (B), and 771(B)(2)(c) are hereby amended and reenacted and

1 R.S. 29:762(17) and (18) and 770(C) are hereby enacted to read as follows:

2 §762. Definitions

3 As used in this Chapter, unless the context clearly requires otherwise, the  
4 following definitions shall apply and shall be equally applicable to both the  
5 singular and plural forms of any of the defined terms:

6 \* \* \*

7 (7) "Inpatient health care facility" includes all of the following:

8 (a) A hospital licensed pursuant to Part II of Chapter 11 of Title 40 of  
9 the Louisiana Revised Statutes of 1950.

10 (b) A nursing home, as defined in R.S. 40:2009.2.

11 (c) An adult residential care home, as defined in R.S. 40:2166.3,  
12 including but not limited to assisted living facilities.

13 (8) "Isolation" means the physical separation and confinement of an  
14 individual or groups of individuals who are infected or are reasonably believed to be  
15 infected with a contagious or possibly contagious disease from non-isolated  
16 individuals, to prevent or limit the transmission of the disease to non-isolated  
17 individuals.

18 (9) "Member of the clergy" means a priest, pastor, rabbi, duly ordained  
19 clerical deacon or minister, Christian Science practitioner, or other similarly  
20 situated functionary of a religious organization.

21 ~~(8)~~(10) "Mental health support personnel" includes but is not limited to  
22 psychiatrists, psychologists, social workers, members of the clergy, and volunteer  
23 crisis counseling groups.

24 ~~(9)~~(11) "Military Department, state of Louisiana" includes the Louisiana  
25 National Guard, the army national guard, the air national guard, or any other military  
26 force organized under the laws of this state.

27 ~~(10)~~(12) "Protected health information" means any information, whether  
28 oral, written, electronic, visual, or any other form, that relates to an individual's past,  
29 present, or future physical or mental health status, condition, treatment, service,

1 products purchased, or provision of care, and that reveals the identity of the  
2 individual whose health care is the subject of the information, or where there is a  
3 reasonable basis to believe such information could be utilized (either alone or with  
4 other information that is, or should reasonably be known to be, available to  
5 predictable recipients of such information) to reveal the identity of that individual.

6 "Protected health information" includes any health or medical information,  
7 document, or record designated as confidential by state or federal law.

8 ~~(11)~~**(13)** "Public health authority" means the secretary of the Louisiana  
9 Department of Health, or his designee, and the state health officer.

10 ~~(12)~~**(14)** A "public health emergency" means an occurrence or imminent  
11 threat of an illness or health condition that:

12 (a) Is believed to be caused by any of the following:

13 (i) Bioterrorism.

14 (ii) The appearance of a novel or previously controlled or eradicated  
15 infectious agent or biological toxin.

16 (iii) A disaster, including but not limited to natural disasters such as  
17 hurricane, tornado, storm, flood, high winds, and other weather related events, forest  
18 and marsh fires, and man-made disasters, including but not limited to, nuclear power  
19 plant incidents or nuclear attack, hazardous materials incidents, accidental release  
20 or chemical attack, oil spills, explosion, civil disturbances, public calamity, hostile  
21 military action, and other events related thereto.

22 (b) Poses a high probability of any of the following harms:

23 (i) A large number of deaths in the affected population.

24 (ii) A large number of serious or long-term disabilities in the affected  
25 population.

26 (iii) Widespread exposure to an infectious or toxic agent that poses a  
27 significant risk of substantial future harm to a large number of people in the affected  
28 population.

29 ~~(13)~~**(15)** "Quarantine" means the physical separation and confinement of an

1 individual or groups of individuals, who are or may have been exposed to a  
2 contagious or possibly contagious disease and who do not show signs or symptoms  
3 of a contagious disease, from non-quarantined individuals, to prevent or limit the  
4 transmission of the disease to non-quarantined individuals.

5 ~~(14)~~**(16)** "Specimens" include but are not limited to blood, sputum, urine,  
6 stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required  
7 tests.

8 ~~(15)~~**(17)** "Tests" include but are not limited to any diagnostic or investigative  
9 analyses necessary to prevent the spread of disease or protect the public's health,  
10 safety, and welfare.

11 ~~(16)~~**(18)** "Trial court" means the state judicial district court for the district  
12 in which isolation or quarantine is to occur, or, in the case of a declaration that  
13 involves more than a single state judicial district, the Nineteenth Judicial District  
14 Court.

15 \* \* \*

16 §770. Public information regarding a public health emergency; **access to mental**  
17 **health support personnel; access to members of the clergy**

18 \* \* \*

19 B. Access to mental health support personnel.

20 (1) During a declaration of a state of public health emergency, the secretary  
21 of the Louisiana Department of Health or his designee shall provide information  
22 about and referrals to mental health support personnel to address psychological  
23 responses to the public health emergency. **The information provided may include**  
24 **the availability of no-cost or reduced-cost counseling or mental health support**  
25 **services offered by members of the clergy, religious organizations, or other**  
26 **nonprofit organizations.**

27 (2) After a declaration of a state of public health emergency, the secretary of  
28 the Louisiana Department of Health or his designee shall provide information about  
29 and referrals to mental health support personnel to address psychological responses

1 to the public health emergency. The information provided may include the  
2 availability of no-cost or reduced-cost counseling or mental health support  
3 services offered by members of the clergy, religious organizations, or other  
4 nonprofit organizations.

5 C. Access to members of the clergy.

6 (1)(a) During a state of public health emergency, which is declared to  
7 combat COVID-19 or any other contagious disease or infectious disease, the  
8 Department of Health shall require each inpatient health care facility to provide  
9 patient or resident access to members of the clergy for prayer, mental health  
10 support or religious counseling, the sacraments of Holy Communion, Anointing  
11 of the Sick, and Last Rites, and other such customary religious services that  
12 would normally be offered to patients or residents if the inpatient health care  
13 facility was not subject to a declaration of a state of public health emergency.

14 (b) The customary religious services set forth in Subparagraph (a) of  
15 this Paragraph shall be permitted in the same manner that those services would  
16 normally be permitted by the inpatient health care facility during such times  
17 when the inpatient health care facility is not subject to a declaration of a state  
18 of public health emergency, except that each member of the clergy shall be  
19 required to comply with the provisions of Paragraph (2) of this Subsection.

20 (2) A member of the clergy who volunteers to visit or minister to a  
21 patient or resident in an inpatient health care facility, as provided in  
22 Paragraph (1) of this Subsection, shall:

23 (a) Submit to a health screening, including but not limited to a  
24 temperature check.

25 (b) Wear the same personal protective equipment as the medical staff  
26 of the inpatient health care facility.

27 (c) Sign a written waiver of liability acknowledging the inpatient health  
28 care facility's immunity from civil liability, as provided in R.S.  
29 29:771(B)(2)(c)(i), if required to do so by the inpatient health care facility.

1            (d) Comply with all other safety requirements that the inpatient health  
2            care facility imposes on its staff or other health care workers.

3            (e) Not disrupt clinical care.

4            (3) The inpatient health care facility shall identify and prescribe the type  
5            of personal protective equipment required to be worn by members of the clergy,  
6            pursuant to Subparagraph (2)(b) of this Subsection. If the inpatient health care  
7            facility provides the personal protective equipment to a member of the clergy,  
8            then the inpatient health care facility may recover the actual cost of the  
9            equipment from the member of the clergy.

10           (4) The legislature declares that the purpose of this Subsection is to  
11           protect the religious liberty of each patient or resident and to protect inpatient  
12           health care facilities from costly lawsuits and administrative complaints on the  
13           basis of religious discrimination by affording patient or resident access to  
14           members of the clergy provided those members of the clergy enter the inpatient  
15           health care facility, on a voluntary basis, and agree to and comply with the  
16           safety requirements provided for in this Subsection, accept the risk associated  
17           with such entry, and waive liability in order to visit and minister to the patient  
18           or resident.

19           (5) Notwithstanding any other provision of law to the contrary, no  
20           member of the clergy who is an employee or independent contractor of a  
21           religious organization shall be required, as a condition of employment or  
22           contract, to visit or minister to a patient or resident of an inpatient health care  
23           facility during a state of public health emergency, which is declared to combat  
24           COVID-19 or any other contagious disease or infectious disease. Whether the  
25           member of the clergy chooses to enter the facility shall be a personal decision  
26           that, regardless of his choice, shall in no way affect his rights under Title 23 of  
27           the Louisiana Revised Statutes of 1950 or any other provision of law, and all  
28           such rights are hereby preserved.

29           §771. Miscellaneous

1 \* \* \*

2 B. Liability.

3 \* \* \*

4 (2) Private liability.

5 \* \* \*

6 (c)(i) During a state of public health emergency, ~~any no~~ health care ~~providers~~  
7 **provider** shall ~~not~~ be civilly liable for causing the death of, or, injury to, any person  
8 or damage to any property except in the event of gross negligence or willful  
9 misconduct.

10 **(ii) During a state of public health emergency, which is declared to**  
11 **combat COVID-19 or any other contagious disease or infectious disease, no**  
12 **inpatient health care facility shall be liable to a member of the clergy for any**  
13 **civil damages for injury or death resulting from or related to actual or alleged**  
14 **exposure during the course of, or through the performance of, fulfilling a**  
15 **patient's or resident's request for access to a member of the clergy in**  
16 **compliance with R.S. 29:770(C) unless the inpatient health care facility failed**  
17 **to substantially comply with the applicable procedures established by the**  
18 **Department of Health that govern the inpatient health care facility operations**  
19 **and the injury or death was caused by the inpatient health care facility's gross**  
20 **negligence or wanton or reckless misconduct.**

21 \* \* \*

22 Section 2. This Act shall become effective upon signature by the governor or, if not  
23 signed by the governor, upon expiration of the time for bills to become law without signature  
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
26 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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## DIGEST

SB 12 Original

2020 Second Extraordinary Session

Robert Mills

Present law (R.S. 29:760-772) provides for Louisiana Health Emergency Powers Act, which allows the governor to issue an executive order or proclamation declaring a public health emergency, following consultation with the La. Dept. of Health (LDH), if he finds a public health emergency has occurred or the threat thereof is imminent.

Present law (R.S. 29:762(12)) defines "public health emergency" to include an occurrence or imminent threat of an illness or health condition that is believed to be caused by the appearance of a novel, previously controlled, or eradicated infectious agent or biological toxin.

Present law (R.S. 29:770(B)) provides that, during a declaration of a state of public health emergency, the LDH secretary or his designee will provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency. Present law further defines "mental health support personnel" to include psychiatrists, psychologists, social workers, and volunteer crisis counseling groups.

Proposed law retains present law but adds members of the clergy to the list of mental health support personnel for which the LDH provides information and referrals during and after public health emergencies. Proposed law defines "member of the clergy" as any priest, pastor, rabbi, duly ordained clerical deacon or minister, Christian Science practitioner, or other similarly situated functionary of a religious organization.

Proposed law provides that the LDH may include the availability of no-cost or reduced-cost counseling or mental health support services offered by members of the clergy, religious organizations, or other nonprofit organizations when providing information about and referrals to mental health support personnel to address the psychological responses to the public health emergency.

Proposed law defines "inpatient health care facility" to include all of the following:

- (1) A hospital licensed under present law (R.S. 40:2102-2115).
- (2) A nursing home as defined in present law (R.S. 40:2009.2).
- (3) An adult residential care home as defined in present law, including but not limited to assisted living facilities (R.S. 40:2166.3).

Proposed law requires that, during the COVID-19 public health emergency or any other contagious or infectious disease for which a state of public health emergency has been declared, an inpatient health care facility provide patient or resident access to members of the clergy for prayer, mental health support or religious counseling, the sacraments of Holy Communion, Anointing of the Sick, and Last Rites, and other such customary religious services that would normally be offered to patients or residents if the health care facility was not subject to a declaration of a state of public health emergency. Proposed law further requires that such religious services will be permitted in the same manner that would normally be permitted by the inpatient health care facility during such times when the health care facility is not under a declaration of a state of public health emergency.

Proposed law provides that a member of the clergy who volunteers to visit a patient or resident in an inpatient health care facility must:



- (1) Submit to a health screening, including but not limited to a temperature check.
- (2) Wear the same personal protective equipment as the medical staff of the health care facility.
- (3) Sign a written waiver of liability acknowledging the health care facility's immunity from civil liability, as provided in proposed law, if required to do so by the health care facility.
- (4) Comply with all other safety requirements that the inpatient health care facility imposes on its staff or other health care workers.
- (5) Not disrupt clinical care.

Proposed law requires that the inpatient health care facility identify and prescribe the type of personal protective equipment to be worn by members of the clergy. If the inpatient health care facility provides the personal protective equipment to a member of the clergy, then the inpatient health care facility may recover the actual costs of the equipment from the member of the clergy.

Proposed law provides that the legislative purpose of proposed law is to protect the religious liberty of each patient or resident and to protect inpatient health care facilities from costly lawsuits and administrative complaints on the basis of religious discrimination by affording each patient or resident access to members of the clergy when those members of the clergy volunteer to enter the inpatient health care facility, agree to and comply with the safety requirements provided for in proposed law, accept the risk associated with such entry, and waive liability in order to visit and minister to the patient or resident.

Present law (Title 23) provides certain protections for certain employees, such as unemployment benefits and workers compensation benefits, and also provides certain benefits to independent contractors, such as requirements for safe workplaces.

Proposed law provides that no member of the clergy who is an employee or independent contractor of a religious organization shall, as a condition of employment or a condition of contract, be required by the religious organization to visit or minister to a patient or resident of an inpatient health care facility during a state of public health emergency that is declared to combat COVID-19 or other contagious or infectious disease. Proposed law further provides that the member of the clergy may choose to enter the facility or refuse to do so. Regardless of his decision, his rights under present law (Title 23) or any other provision of law will be preserved.

Proposed law provides that, during a state of public health emergency, which is declared to combat COVID-19 or any other contagious or infectious disease, no inpatient health care facility will be liable to a member of the clergy who visits the inpatient health care facility for any civil damages for injury or death resulting from an actual or alleged exposure to COVID-19 or any other contagious or infectious disease. Proposed law further provides that this limitation on liability will not apply to a facility that fails to substantially comply with the applicable procedures established by the LDH that governs the health care facility operations and the injury or death was caused by the health care facility's gross negligence or wanton or reckless misconduct.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 29:762(intro para) and (7) through (16), 770 (heading) and (B), and 771(B)(2)(c); adds R.S. 29:762(17) and (18) and 770(C))