

2020 Second Extraordinary Session

HOUSE BILL NO. 33

BY REPRESENTATIVE EDMONDS

HEALTH CARE/FACILITIES: 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 (Item #28)

1 AN ACT

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

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 29:762(introductory paragraph) and (7) through (18), 770(B), and
17 771(B)(2)(c) are hereby amended and reenacted and R.S. 29:762(17) and (18) and 770(C)
18 are hereby enacted to read as follows:

1 §762. Definitions

2 As used in this Chapter, unless the context clearly requires otherwise:

3 * * *

4 (7) "Inpatient healthcare facility" includes all of the following:

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

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

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

10 ~~(7)~~(8) "Isolation" means the physical separation and confinement of an
11 individual or groups of individuals who are infected or are reasonably believed to be
12 infected with a contagious or possibly contagious disease from non-isolated
13 individuals, to prevent or limit the transmission of the disease to non-isolated
14 individuals.

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

18 ~~(8)~~(10) "Mental health support personnel" includes but is not limited to
19 psychiatrists, psychologists, social workers, members of the clergy, and volunteer
20 crisis counseling groups.

21 ~~(9)~~(11) "Military Department, state of Louisiana" includes the Louisiana
22 National Guard, the army national guard, the air national guard, or any other military
23 force organized under the laws of this state.

24 ~~(10)~~(12) "Protected health information" means any information, whether
25 oral, written, electronic, visual, or any other form, that relates to an individual's past,
26 present, or future physical or mental health status, condition, treatment, service,
27 products purchased, or provision of care, and that reveals the identity of the
28 individual whose health care is the subject of the information, or where there is a
29 reasonable basis to believe such information could be utilized (either alone or with

1 other information that is, or should reasonably be known to be, available to
2 predictable recipients of such information) to reveal the identity of that individual.

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

5 ~~(11)~~(13) "Public health authority" means the secretary of the Louisiana
6 Department of Health, or his designee, and the state health officer.

7 ~~(12)~~(14) A "public health emergency" means an occurrence or imminent
8 threat of an illness or health condition that:

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

10 (i) Bioterrorism.

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

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

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

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

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

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

26 ~~(13)~~(15) "Quarantine" means the physical separation and confinement of an
27 individual or groups of individuals, who are or may have been exposed to a
28 contagious or possibly contagious disease and who do not show signs or symptoms

1 of a contagious disease, from non-quarantined individuals, to prevent or limit the
2 transmission of the disease to non-quarantined individuals.

3 ~~(14)~~(16) "Specimens" include but are not limited to blood, sputum, urine,
4 stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required
5 tests.

6 ~~(15)~~(17) "Tests" include but are not limited to any diagnostic or investigative
7 analyses necessary to prevent the spread of disease or protect the public's health,
8 safety, and welfare.

9 ~~(16)~~(18) "Trial court" means the state judicial district court for the district
10 in which isolation or quarantine is to occur, or, in the case of a declaration that
11 involves more than a single state judicial district, the Nineteenth Judicial District
12 Court.

13 * * *

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

16 * * *

17 B. Access to mental health support personnel.

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

25 (2) After a declaration of a state of public health emergency, the secretary
26 of the Louisiana Department of Health or his designee shall provide information
27 about and referrals to mental health support personnel to address psychological
28 responses to the public health emergency. The information provided may include
29 the availability of no cost or reduced-cost counseling or mental health support

1 services offered by members of the clergy, religious organizations, or other nonprofit
2 organizations.

3 C. Access to members of the clergy.

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

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

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

21 (a) Submit to a health screening, including but not limited to a temperature
22 check.

23 (b) Wear the same personal protective equipment as the medical staff of the
24 inpatient healthcare facility.

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

28 (d) Comply with all other safety requirements that the inpatient healthcare
29 facility imposes on its staff or other healthcare workers.

1 (e) Not disrupt clinical care.

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

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

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

25 * * *

26 §771. Miscellaneous

27 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 B. Liability.

2 * * *

3 (2) Private liability.

4 * * *

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

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

19 * * *

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 33 Original

2020 Second Extraordinary Session

Edmonds

Abstract: Defines "inpatient healthcare facility" and "member of the clergy"; allows LDH to include no cost or reduced cost counseling or mental health support services offered by members of the clergy, religious organizations, or other nonprofit organizations; requires healthcare facilities to provide patient or resident access to members of the clergy; and provides that no inpatient healthcare facility shall be civilly liable to members of the clergy for actual or alleged exposure to COVID-19.

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 healthcare 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 healthcare 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 healthcare 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 healthcare facility during such times when the healthcare 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 healthcare facility shall:

- (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 healthcare facility.
- (3) Sign a written waiver of liability acknowledging the healthcare facility's immunity from civil liability, as provided in proposed law, if required to do so by the healthcare facility.
- (4) Comply with all other safety requirements that the inpatient healthcare facility imposes on its staff or other healthcare workers.
- (5) Not disrupt clinical care.

Proposed law requires that the inpatient healthcare facility identify and prescribe the type of personal protective equipment to be worn by members of the clergy. If the inpatient healthcare facility provides the personal protective equipment to a member of the clergy, then the inpatient healthcare 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 healthcare 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 healthcare 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 healthcare facility during a state of public health emergency that is declared to combat COVID-19 or any 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 healthcare facility will be liable to a member of the clergy who visits the inpatient healthcare 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 healthcare facility operations and the injury or death was caused by the healthcare facility's gross negligence or wanton or reckless misconduct.

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

(Amends R.S. 29:762(intro. para.) and (7)-(18), 770(B), and 771(B)(2)(c); Adds R.S. 29:762(17) and (18) and 770(C))