

Regular Session, 2008

SENATE BILL NO. 634

BY SENATOR QUINN

HEALTH CARE. Requires a review of health care services rendered during an emergency prior to criminal prosecution. (8/15/08)

1 AN ACT
2 To enact R.S. 29:735.3, relative to health care services rendered during an emergency; to
3 provide for a review of health care services rendered during a state of emergency
4 prior to criminal prosecution; to provide for membership of the medical review
5 panel; to provide for a procedure for the review of health care services rendered
6 during the state of emergency; to provide for definitions; to provide with respect to
7 confidentiality; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 29:735.3 is hereby enacted to read as follows:

10 **§735.3. Medical panel review of health care services rendered during a state of**
11 **emergency as a prerequisite to criminal prosecution**
12 **A. Any physician, surgeon, or physician's assistant licensed under the**
13 **provisions of Chapter 11 of Title 37 of the Louisiana Revised Statutes of 1950,**
14 **or any nurse licensed under the provisions of Chapter 11 of Title 37 of the**
15 **Louisiana Revised Statutes of 1950, or any physician, surgeon or member of the**
16 **medical profession who is not licensed to practice medicine in Louisiana but**
17 **holds such a valid license to practice in another state, or other medical**

1 personnel subject to the provisions of R.S. 37:1731, who renders or fails to
2 render health care services during a state of emergency, disaster, or health
3 emergency in Louisiana, shall not be subject to criminal liability resulting from
4 any act or omission related to the rendering of or failure to render health care
5 services unless the physician's clinical judgment for rendering such services is
6 reviewed by a medical review panel in accordance with the provisions of this
7 Section.

8 B.(1) Prior to the institution of criminal prosecution for acts arising out
9 of the rendering of, or failing to render, medical services during a state of
10 disaster or medical emergency, the district attorney or the attorney general,
11 whichever is the prosecuting agency, shall refer in confidence those portions of
12 the investigative file to the medical review panel created by the provisions of
13 Subsection C of this Section for a peer review of the clinical judgment of the
14 respondent physician or nurse to determine whether the respondent has
15 deviated from the normal standard of care in the exercise of such clinical
16 judgment and whether such judgment was in good faith given the circumstances
17 under which such judgment was rendered.

18 (2) The panel shall provide an opportunity to the respondent physician,
19 nurse, or other member of the medical profession to set forth in writing the
20 respondent's position with regard to the clinical judgment rendered including
21 any expert opinion on the matter subject to investigation.

22 (3) The panel shall have the right and duty to request and procure all
23 necessary information regarding the services rendered. The panel may consult
24 with medical authorities and others to become fully informed regarding the
25 issues to be decided.

26 (4) The panel shall have the sole duty to express its expert opinion as to
27 whether or not the evidence supports the conclusion that the respondent or
28 respondents acted or failed to act within the appropriate standard of care and
29 whether the exercise of clinical judgment was in good faith given the disastrous

1 circumstances under which the judgment was rendered.

2 (5) The panel shall render one or more of the following expert opinions
3 which shall be in writing and signed by the members of the panel, together with
4 written reasons for their conclusions:

5 (a) The evidence supports the conclusion that the respondent exercised
6 good faith clinical judgment given the circumstances under which such
7 judgment was rendered.

8 (b) The evidence does not support the conclusion that the respondent in
9 good faith, exercised clinical judgment under the circumstances under which
10 such judgment was rendered.

11 (c) There exists a material issue of fact, not requiring expert opinion,
12 bearing on whether the respondent exercised good faith clinical judgment.

13 (6) The panel opinion shall be advisory only and shall be submitted to
14 the prosecutorial authority prior to the institution of a criminal prosecution.

15 (7) After receipt of the advisory opinion from the medical review panel,
16 the prosecuting authority, after giving due consideration to the panel opinion,
17 may proceed in accordance with the constitution and laws of this state to
18 prosecute conduct which, in the prosecuting authority's sole discretion, is
19 deemed actionable.

20 (8) The procedures for the panel review process shall be similar to the
21 panel review process for civil proceedings as provided in R.S. 40:1299.39 et seq.,
22 but on an expedited basis.

23 C. Membership of the medical review panel shall consist of three
24 members and shall include the following:

25 (1) The coroner in the parish where the medical services were rendered,
26 or if unavailable, a coroner with a medical license selected from the Louisiana
27 Coroner's Association.

28 (2) A member of the Louisiana State Medical Society selected by the
29 Louisiana State Medical Society if the respondent is a physician, or a member

1 of the Louisiana State Nurses' Association if the respondent is a nurse, or a
2 member of a peer organization supervising other respondent medical personnel.

3 (3) One member appointed by the governor with expertise in disaster
4 medicine, or if unavailable, an expert selected by the other two members of the
5 panel.

6 D. The prosecuting authority shall be prohibited from arresting the
7 respondent until such time as the medical review panel created by this Section
8 has concluded its review, and an advisory opinion has been received by the
9 prosecuting authority, except where there is probable cause to believe the
10 respondent is a risk of flight.

11 E. For purposes of this Section, the following words shall have the
12 following meaning ascribed to them:

13 (1) "Health care services" means any act of diagnosis, treatment,
14 medical evaluation or advice or such other acts as may be permissible under the
15 health care licensing statutes of the state of Louisiana.

16 (2) "During a state of emergency, disaster or public health emergency"
17 shall include the time period as set forth in the declaration of the emergency,
18 disaster or public health emergency but shall also be retroactive to the
19 precipitating event requiring the declaration of disaster or public emergency.
20 Clinical judgment provided during that time period shall require the
21 application of the statute.

22 F. The panel review process and panel opinion shall remain confidential,
23 unless it is a part of a subsequent legal proceeding and subject to orders of the
24 court.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Camille Sebastien Perry.

DIGEST

Proposed law provides that any physician, surgeon, physician's assistant, or nurse licensed in this state, any member of the medical profession who is not licensed to practice medicine in La. but holds such a valid license to practice in another state, or other medical personnel subject to the provisions of R.S. 37:1731 (Good Samaritan Law), who renders or fails to

render health care services during a state of emergency, disaster or health emergency in La., shall not be subject to criminal liability resulting from any act or omission related to the rendering of or failure to render health care services unless the physician's clinical judgment for rendering such services is reviewed by a medical review panel in accordance with the provisions of proposed law.

Proposed law provides for the membership of the medical review panel and provides for the duties and responsibilities of the panel.

Proposed law prohibits the prosecuting authority from arresting the medical professional until such time as the medical review panel has concluded its review and an advisory opinion has been received by the prosecuting authority, with the exception of persons believed to be a risk of flight.

Proposed law defines "health care services" and "during a state of emergency, disaster or public health emergency."

Effective August 15, 2008.

(Adds R.S. 29:735.3)