

# Liability: Providing Services During an Emergency Declaration

## 20 Del. C. 3129

When an emergency declaration is in effect, the State, a political subdivision, an employee of the State or a political subdivision, qualified medical personnel, or an entity performing services will not be held legally responsible for acting or failing to act. They can be held legally responsible if acting with extreme carelessness or intent to cause harm.

This section does not limit a person's right to workers' compensation.

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### Immunity from civil liability

(a) Neither the State, nor any county in the State, nor any municipal corporation of the State, nor any other political subdivision of the State, nor any agency of any of them, nor the agents, employees or representatives of any of them, nor any qualified medical personnel engaged in emergency or disaster relief operations and activities in connection with any emergency or disaster pursuant to this chapter, nor any person, firm, corporation or other entity performing work and/or furnishing material pursuant to a contract (oral or written) with the State or with any county in the State, or with any municipal corporation of the State, or with any other political subdivision of the State or with any agency of any of them, entered into as a result of the declaration by the Governor of an emergency order or entered into as a part of efforts to comply with this chapter, shall be liable for the death of or any injury to persons, or damage to property, as a result of such relief operations and activities and/or the performance of or attempts to perform such contract, unless such death, injury or damage was intentional on the part of, or was caused by the wilful or wanton disregard of the rights of others by the State, or by the county, or by the municipal corporation, or by the other political subdivision, as the case may be, or by any agency of any of them, or by the agents, employees or

representatives of any of them or by the qualified medical personnel or by such person, firm, corporation or other entity engaged in such emergency or disaster relief operations and activities and/or the performance and attempted performance of such contract, as the case may be. These provisions shall not affect the right of any person to receive statutory benefits to which that person would otherwise be entitled in the absence of this section or under the Workers' Compensation Act (Chapter 23 of Title 19) or under any pension law, or the right of any such person to receive any benefits or compensation under any act of Congress.

(b) No act or omission of qualified medical personnel during such relief operations and activities shall affect an insured physician's liability coverage in any way.

(c) Qualified medical personnel may petition a court of competent jurisdiction for a court-appointed attorney to represent the medical provider's interests in any action brought based on the medical provider's acts or omissions during the emergency or disaster relief operations and activities. If the judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the judge may require, determines that the petition has merit, the judge shall appoint an attorney to represent the interests of such medical provider. The court may first appoint an attorney from the Department of Justice. If the court determines that the Department is unable to represent the medical provider, the court may appoint an attorney licensed in this State. A court-appointed attorney shall represent the medical provider in all proceedings from the date of appointment until a final determination of the matter has been reached, unless the attorney is earlier released by the medical provider or by the court. This section shall also apply to all federal courts within this State.

(d) Qualified medical personnel under this chapter shall be indemnified by the State against any expenses (including attorneys' fees and disbursements), judgments, fines and costs, actually and reasonably incurred in defending against the action, suit or proceeding giving rise thereto.