

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 6A. Public Health Service (Refs & Annos)
Subchapter I. Administration and Miscellaneous Provisions (Refs & Annos)
Part B. Miscellaneous Provisions (Refs & Annos)

42 U.S.C.A. § 238q

§ 238q. Liability regarding emergency use of automated external defibrillators

Effective: November 13, 2000

[Currentness](#)

(a) Good Samaritan protections regarding AEDs

Except as provided in subsection (b), any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device--

- (1)** to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;
- (2)** to properly maintain and test the device; or
- (3)** to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if--
 - (A)** the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or
 - (B)** the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm (or between the acquisition of the device and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person) was not a reasonably sufficient period in which to provide the training.

(b) Inapplicability of immunity

Immunity under subsection (a) does not apply to a person if--

(1) the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;

(2) the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;

(3) the person is a hospital, clinic, or other entity whose purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

(4) the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

(c) Rules of construction

(1) In general

The following applies with respect to this section:

(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

(B) With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

(C) This section does not waive any protection from liability for Federal officers or employees under--

(i) [section 233](#) of this title; or

(ii) [sections 1346\(b\)](#), [2672](#), and [2679](#) of [Title 28](#) or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under [section 1346\(b\)](#) of [Title 28](#).

(2) Civil actions under Federal law

(A) In general

The applicability of subsections (a) and (b) includes applicability to any action for civil liability described in subsection (a) that arises under Federal law.

(B) Federal areas adopting State law

If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) that in such area arises under the law of the State is subject to subsections (a) through (c) in lieu of any related State law that would apply in such area in the absence of this subparagraph.

(d) Federal jurisdiction

In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section exclusive of the jurisdiction of the courts of the United States.

(e) Definitions

(1) Perceived medical emergency

For purposes of this section, the term “perceived medical emergency” means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(2) Other definitions

For purposes of this section:

(A) The term “automated external defibrillator device” means a defibrillator device that--

(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;

(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

(B)(i) The term “harm” includes physical, nonphysical, economic, and noneconomic losses.

(ii) The term “economic loss” means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(iii) The term “noneconomic losses” means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

CREDIT(S)

(July 1, 1944, c. 373, Title II, § 248, as added [Pub.L. 106-505, Title IV, § 404](#), Nov. 13, 2000, 114 Stat. 2338.)

42 U.S.C.A. § 238q, 42 USCA § 238q

Current through P.L.118-7. Some statute sections may be more current, see credits for details.

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