To amend the Families First Coronavirus Response Act to provide paid sick leave for health care providers and emergency responders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 9, 2020

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on House Administration, Oversight and Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend the Families First Coronavirus Response Act to provide paid sick leave for health care providers and emergency responders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Essential Workforce Parity Act”.
SEC. 2. AMENDMENTS.

(a) IN GENERAL.—Section 5102 of the Families First Coronavirus Response Act (29 U.S.C. 2601 note) is amended—

(1) in subsection (a), in the matter following paragraph (6)—

(A) by inserting “of paragraphs (1), (3), (4), (5), and (6)” after “employee from the application”; and

(B) by adding “Paragraph (2) shall apply with respect to an employee who is a health care provider by substituting ‘because such provider determines that the employee has tested positive for COVID–19 or attests that the employee is at greater risk for COVID–19 because the employee is living with someone who has tested positive for COVID–19.’ for ‘due to concerns related to COVID–19.’”; and

(2) by adding at the end the following:

“(g) CERTIFICATION FOR HEALTH CARE PROVIDERS.—

“(1) IN GENERAL.—If an employer requires that a request for leave by a health care provider under subsection (a)(2) be certified, the employer may require documentation for certification not ear-
lier than 5 weeks after the date on which the em-
ployee takes such leave.

“(2) SUFFICIENT DOCUMENTATION.—Docu-
mentation of a positive COVID–19 test or an attes-
tation from a health care provider of an employee
that the employee meets the requirements under
subsection (a)(2) shall be sufficient for certifi-
cation.”.

(b) REGULATORY AUTHORITY.—Section 5111 of the
Families First Coronavirus Response Act (29 U.S.C. 2601
note) is amended by striking paragraph (1) and redesig-
nating paragraphs (2) and (3) as paragraphs (1) and (2),
respectively.

SEC. 3. LIMITATION ON LIABILITY FOR HEALTH CARE PRO-
FESSIONALS AND RELATED HEALTH CARE
ENTITIES RELATED TO COVID–19 EMER-
GENCY RESPONSE.

(a) LIMITATION ON LIABILITY.—Except as provided
in subsection (c), a health care professional, the profes-
sional’s related health care entity, and any other staff of
the related health care entity, shall not be liable for dam-
ages under any law of the United States or of any State
(or political subdivision thereof) for any harm caused by
any act or omission of such health care professional, re-
lated health care entity, or other staff, in the course of arranging for or providing health care services if—

(1) the act or omission occurs during the COVID–19 emergency period and the 60-day period following such emergency period;

(2) the act or omission occurs in the course of providing health care services that—

(A) are within the scope of the license, registration, or certification of the health care professional, as defined by the health care professional’s State of licensure, registration, or certification; and

(B) do not exceed the scope of license, registration, or certification of a substantially similar health professional in the State in which such act or omission occurs; and

(3) the health care services in question were provided in good faith or were withheld for reasons related to the COVID–19 emergency period.

(b) ADDITIONAL COVERED ACTS.—Except as provided under subsection (c), the limitation on liability under subsection (a) shall apply to any act or omission that may be outside the health care professional’s normal area of practice and are within the licensure and accreditation of the related health care entity that is—
(1) based on any direction, guidance, recommendation, or other statement made by a Federal, State, or local official to address or in response to the COVID–19 emergency period;

(2) based on any guidance published by any Federal, State, or local department or any division or agency of such department in response to the COVID–19 emergency period; or

(3) undertaken or omitted due to a lack of resources, including manpower, attributable to the COVID–19 emergency period.

(c) EXCEPTIONS.—Subsections (a) and (b) do not apply if—

(1) the harm was caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the health care professional or related health care entity; or

(2) the health care professional rendered the health care services under the influence (as determined pursuant to applicable State law) of alcohol or an intoxicating drug (other than where the health care professional is properly taking a prescription drug ordered by a physician).
(d) Preemption.—

(1) In general.—This section preempts the laws of a State or any political subdivision of a State to the extent that such laws are inconsistent with this section, unless such laws provide greater protection from liability.

(2) Volunteer protection Act.—Protections afforded by this section are in addition to those provided by the Volunteer Protection Act of 1997 (Public Law 105–19).

(e) Definitions.—In this section—

(1) the term “harm” includes physical, non-physical, economic, and noneconomic injury or losses;

(2) the term “health care professional” means an individual who is licensed, registered, or certified under Federal or State law to provide health care services;

(3) the term “related health care entity” means an entity with which a health care professional has a professional affiliation under which the health care professional performs health care services, including any such skilled nursing facility, hospital, academic medical center, ambulatory surgical center, group medical practice, or medical clinic;
(4) the term “professional affiliation” means staff privileges, medical staff membership, employment or contractual relationship, partnership or ownership interest, academic appointment, or other affiliation under which a health care professional provides health care services on behalf of, or in association with, the related health care entity;

(5) the term “health care services” means any services rendered or items provided by a health care professional or the professional’s related health care entity, or by any individual working under the supervision of a health care professional, that relate to—

(A) the treatment, diagnosis, prevention, or mitigation of COVID–19;

(B) treatment, diagnosis, or care with respect to an individual with a confirmed or suspected case of COVID–19; or

(C) treatment, diagnosis, or care with respect to an individual who presents to a health care professional or the professional’s related health care entity during the COVID–19 emergency period; and

(6) the term “COVID–19 emergency period” has the meaning given the term “emergency period”
in section 1135(g)(1)(B) of the Social Security Act
(42 U.S.C. 1320b–5(g)(1)(B)).
(f) EFFECTIVE DATE.—This section shall apply with respect to any act or omission described in this section that occurred on or after the date on which the COVID–19 emergency period began.