

THE KERALA EMERGENCY MEDICAL CARE AND PROTECTION OF GOOD SAMARITANS BILL, 2019

A

BILL

to ensure emergency medical treatment by hospitals and medical practitioners to victims of accidents and those who are in emergency medical condition without raising any objection or objections that the cases are medico-legal cases or any other objection and without demanding any payment as a condition precedent for such treatment and to provide for a scheme for reimbursement of emergency medical treatment and for protection of good Samaritans and for other matters incidental thereto:

Preamble.— WHEREAS, it is expedient to provide emergency medical treatment by hospitals to victims of accidents and those who are in emergency medical condition,

AND WHEREAS it is expedient to provide a scheme for reimbursement of the charges for the emergency medical treatment to hospitals and for protection of persons who offer help to victims of accidents and for payment of their expenses and for matters connected therewith or incidental thereto:

BE it enacted in the seventieth year of the Republic of India, as follows:-

1. ***Short title, extent and commencement*** .- (1) This Act may be called “The Kerala Emergency Medical Care And Protection of Good Samaritans Act, 2019”

(2) It shall extend to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*- In this Act, unless the context otherwise requires,-

(a) “accident” means any accident giving rise to serious injury which leads the victim to an emergency medical condition;

(b) “Authority” means the Emergency Medical Care and Good Samaritans Authority constituted under Section 11;

(c) “bystander” means a person who is present at the place of an accident or comes there immediately and offers help by taking emergency response;

(d) “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in.-

- (i) Death of the person, or
- (ii) Placing the health of the individual in serious jeopardy, or
- (iii) serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(e) “emergency medical treatment” means the action that is required to be taken, after screening of a person who is in an emergency medical condition, as to the stabilization of the person and the rendering of such further treatment as may, in the opinion of the hospital or medical practitioner, be necessary for the purpose of preventing aggravation of the medical condition of the person;

(f) “emergency response” means reasonable necessary reaction by a person to an accident and taking the victim or victims to a hospital and includes calling in Ambulance or Police;

(g) “Government” means Government of Kerala;

- (h) “Good Samaritan” means a person who offers help to persons in need and includes a bystander who helps a victim by taking emergency response;
- (i) “hospital” means all medical institutions providing treatment in modern medicines and having facilities for emergency medical treatment;
- (j) “ Medico-Legal case” means any case involving an accident or crime that requires information to be given to the police authorities by the Hospital;
- (k) “medical practitioner” means a medical practitioner who possesses any recognized medical qualification as defined in clause (i) of section 2 of the Indian Medical Council Act, 1956 (Act 102 of 1956) and who is enrolled in a State Medical Register as defined in clause (k) of that section;
- (l) “prescribed” means prescribed by Rules made under this Act;
- (m) ‘stabilize’ means, with respect to an emergency medical condition specified in clause (d) to provide such medical treatment as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition of the person is likely to result from or occur during the transfer of the person from a hospital;
- (n) “transfer” means the movement including the discharge of an individual from a hospital at the direction of any medical practitioner but does not include discharge or transfer of an individual who has been declared dead or leaves the hospital without the permission of the Medical Practitioner attending on him;
- (o) “victim” means a person injured in an accident or crime.

3. Duty of hospitals .- It shall be the duty of every hospital mentioned in clause (i) of Section.2 to attend every person who is purportedly in an emergency medical condition, when such a person has come or has been brought to the hospital and to screen such person as stated in section 4 and when the screening reveals the existence of an emergency medical condition, to stabilize or transfer such person as stated in section 5 and afford him, such medical treatment as may be urgently called for,-

- (i) without raising any objection that it is a medico-legal case requiring information to the police authorities,
- (ii) whether or not such a person is immediately in a position to make payment for the screening and emergency medical treatment, and without insisting on payment as a condition precedent.
- (iii) whether or not such a person has medical insurance or is a member of any medical scheme of the person's employer or to a scheme which otherwise provides for medical reimbursement, and
- (iv) without raising any other unreasonable objections.

Explanation.- The duty of a hospital starts only from the time the person who is purportedly in an emergency medical condition comes or is brought to the hospital.

4. Screening of the person.- Whenever a person referred to in section 3, comes or is brought to the hospital, it shall be the duty of the hospital to provide an appropriate medical screening examination within the capability of the hospital for the purpose of determining whether or not an emergency medical condition exists.

5. Stabilizing the person and transfer.- Wherever in respect of a person referred to in section 3, screening, as stated in section 4 has been done and it has been determined that an emergency medical condition exists which requires to be urgently treated, it shall be the duty of the hospital, either-

- (i) to provide such further medical examination and such medical treatment as may be required to stabilize his medical condition , or

- (ii) where facilities for stabilization and further treatment are not available with the hospital or the person requests for a transfer, arrange for the transfer of the person to a hospital which in their opinion has the necessary facilities for stabilization and further medical treatment and then the provisions of section 8 shall apply.

6. Refusal by the person or his relatives to consent for treatment.- Where in respect of a person referred to in section 3, it has been determined that he requires emergency medical treatment as stated in Sub Section (i) of Section 5, and such person refuses to consent to emergency medical treatment after the hospital has offered to provide further emergency medical treatment, and after being informed of the risks and benefits of such emergency medical treatment, the hospital shall take all reasonable steps to transfer such victim to another hospital.

Explanation:- Refusal to consent may be communicated by the person if he is mentally and physically capable to do so and in other cases by his relatives.

7. Restricting transfer till the person is stabilized.- (1) Where a person referred to in section 3 requests for transfer but is in an emergency medical condition which has not been stabilized, the hospital shall not transfer the person if facilities for stabilization are available, unless

- (i) the person or his relatives being informed of the obligations of the Hospital as stated in section 3 and of the risk involved in such transfer, requests for transfer in writing without stabilization, to another hospital, or
- (ii) the medical practitioner in the hospital certifies that, the benefits reasonably expected from the medical treatment provided by another hospital will outweigh the increased risks to the person on account of such transfer, and

(2) the transfer is an appropriate transfer as stated in Section 8.

8. Appropriate transfer.- A transfer to another hospital shall be considered as an appropriate transfer if,

- (a) the transferring hospital provides medical treatment within its capacity minimizing the risk to the health of the person, and
- (b) the receiving hospital has available space, qualified personnel and infrastructure for providing emergency medical treatment to the person and thereafter, in so far as the stabilization and further medical treatment are concerned, the duties cast under section 3 shall apply to the receiving hospital,
- (c) the transferring hospital sends to the receiving hospital.
 - (i) all medical records (or copies thereof), relating to the screening and the emergency medical condition of the person, which are available at the time of such transfer, including records relating to the person's medical condition, observation of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent, if any, and
 - (ii) a certificate of the hospital or medical practitioner that, based upon the information available at the time of transfer that the medical benefits reasonably expected from the provision of appropriate medical treatment at the receiving hospital outweigh the increased risks, on account of the transfer, to the person.
- (d) the transferring hospital provides necessary medical facilities including life support systems and qualified personnel within the capacity of the transferring hospital to accompany the person during the period covered by transport to the receiving hospital,

Explanation.- 1. In cases, where the bystanders or relatives arrange vehicles for transfer, the hospital shall arrange sufficient trained supporting staff for accompanying the patient up to the receiving hospital.

Explanation.-2. In cases where the bystanders or relatives refuse the transport facility advised by the hospital, the responsibility of the patients will lie on the bystanders or the relatives as the case may be.

- (e) the transferring hospital has informed, the receiving hospital that a person in an emergency medical condition is being transferred and furnish the details of the person's condition,

Provided that where any ambulance or other transport vehicle is not available with the transferring hospital it shall call for the services of an ambulance or other transport vehicle and in case of non-availability thereof, shall seek the assistance of any police authorities having jurisdiction over the area where the transferring hospital is located for requisitioning a transport vehicle,

Provided further that when any ambulance or vehicle is called for by such hospital or by police authorities as aforesaid, the agency running the ambulance or the owner or person operating the vehicle, shall not raise any objection to provide the ambulance or other transport vehicle on any of the grounds referred to in clauses (i) to (iv) of Section 3.

9. Maintenance of records.- Every hospital shall maintain a separate register containing the following information:

- (a) In respect of an accident or crime, name and address of the person injured, date and place of accident or crime as reported, nature of injuries and other relevant details, and the persons who brought him,
- (b) name and address of the person purportedly in emergency medical condition, nature of emergency and nature of medical condition, and the person who brought him,

- (c) Details of the screening tests done and the determination of emergency condition,
- (d) Whether the person is in a position to give informed consent for emergency medical treatment including stabilization or for transfer or if he refused them,
- (e) Whether emergency medical treatment was not given for want of facilities, if so, which facilities,
- (f) Nature of tests done, results thereof, surgery conducted, name of Doctor who attended, time, date and total period of treatment,
- (g) Details of transfer to another hospital or medical practitioner
- (h) Details of fee paid to consultants or laboratories,
- (i) Details of expenditure incurred,
- (j) Other particulars to show that the hospital complied with its duties under the Act.
- (k) Such other particulars as may be prescribed.

10. Constitution of Emergency Medical Care and Good Samaritan Authority.-

- (1) The government shall within a period of three months from the date of commencement of the Act, constitute an Authority to be known as Emergency Medical Care and Good Samaritan Authority.
- (2) The Chairman and Members of the Authority shall be as may be specified in a scheme to be framed by the government.

11. Duties and Functions of the Authority.- The duties and functions of the Authority shall be:

- (a) to reimburse the amount for the medical treatment charged by the Hospital and the expenses incurred by the Good Samaritans on satisfying the conditions specified in the scheme;
- (b) to receive complaints of harassment or violation of rights of Good Samaritans and take appropriate steps against persons involved in such harassment or violation;
- (c) to take up mass media campaigns to encourage and sensitize the public becoming Good Samaritans; and

- (d) to sensitize the general public about the rights of Good Samaritans in such manner as may be specified in the scheme.

12. Scheme of State Government for reimbursement of expenses.- (1)

The State Government shall frame a scheme, within three months from the date of commencement of this Act specifying the details regarding reimbursement of the amount for medical treatment charged by a hospital or agency which has provided ambulance facilities or to persons who provided vehicle for transfer as mentioned in the proviso to clause (e) of Section 8 and also for the reimbursement of expenses incurred by the Good Samaritans.

(2) Such a scheme shall, interalia , cover to:

- (a) the conditions which have to be satisfied for reimbursement of the amount for medical treatment charged by the Hospital and the expenses incurred by the Good Samaritans ;
- (b) the manner in which applications may be made for reimbursement;
- (c) the procedure for considering such applications;
- (d) the period of treatment by hospitals for which reimbursement of charges to hospitals are to be made;
- (e) the manner in which the governmental or private medical schemes and in medical insurance available to patients are to be extended to them by hospitals;
- (f) the manner in which the amount paid to a hospital by the Authority is to be recovered from the patient for whose treatment is charged in the event of reimbursement or receipt of such amount;
- (g) the time frame and mode of reimbursement;
- (h) the manner in which the media campaigns and sensitization of general public to become Good Samaritans are to be undertaken, and;
- (i) other details which may be required for the effective enforcement of the provisions of the Act;

(3) The State Government shall allocate necessary funds for the purpose of reimbursement of the amounts referred to in Sub Section (1).

(4) The scheme framed under Sub Section (1) and the subsequent changes, if any, made there to from time to time, shall be published in the gazette.

13. Rights of a Good Samaritan.- (1) Without prejudice to the generality of the foregoing provision, a Good Samaritan, in respect of an accident in which he helps in saving the life or property of a victim, shall have the following rights, namely:-

(a) he shall not be required or compelled to lodge a First Information Report unless he decides otherwise;

(b) he shall not be required or compelled to pay any charges for treatment including future treatment to the hospital or clinic in which the victim is brought by him for treatment;

(c) unless he so chooses, he shall not be detained by the hospital or any police official for any reason including, but not limited to.-

(i) finding or confirming the identity of the victim;

(ii) any questioning unless he decides to stay and respond;
and

(iii) standing as witness or providing evidence to the police or any other person unless he decides otherwise.

(d) he shall not be forced to reveal his identity; and

(e) he shall not be subjected to any force or harassment by any person investigating into or otherwise related to the accident.

(2) Where a Good Samaritan chooses to assist in the investigation of an accident, the police shall act with sensitivity towards him and complete the recording of his statement and all other proceedings relating to him in a timely manner and he shall not be called repeatedly.

14. Duty of Educational Institutions to impart training.- (1) It shall be the duty of every educational institution to impart training in first-aid and emergency response to every student above the age of thirteen years for such duration, as may be prescribed.

(2) The training under sub-section (1) shall be imparted once in every academic year.

(3) For the purpose of imparting training under sub-section (1), the educational institutions shall take the assistance of such professionals or institutions, as the Government may, by notification in the Official Gazette, specify.

15. Duty of Government to impart training.- (1) It shall be the duty of the Government to impart training in first-aid and emergency response to all their employees once in every year.

(2) For the purpose of imparting training under sub-section (1), the Government shall take the assistance of such professionals or institutions, as it may, by notification in the Official Gazette, specify.

16. Duty of Government to organise workshops and Seminars.- The Government shall, from time to time, organize and conduct programmes, workshops and seminars to. –

- (a) sensitise the citizens in becoming Good Samaritans;
- (b) make the citizens aware of emergency response numbers of ambulance service and police assistance; and
- (c) train the citizens in the art of first-aid and emergency response.

17. Offences to be cognizable and bailable.- The offences under this Act shall be cognizable and bailable.

18. Constitution of expert panel.- (1) The government shall constitute an expert panel consisting of the following three members:

- (i) District Medical Officer
- (ii) District Public Prosecutor
- (iii) A doctor specialised in Forensic medicine

(2) The District Medical Officer may secure the service of a medical practitioner having expertise in the field in which the case arises.

(3) Whenever a case is referred to an Expert Panel by the investigating officer as provided under Section 19, the Expert Panel shall, within a period of two months ,submit its views thereof to the investigating officer to be taken into consideration for further investigation. If the expert panel fails to submit its views within the aforesaid period , the investigating officer may obtain an expert opinion from other sources and proceed with the investigation.

19. Procedure for investigation against Medical Practitioner.- If any case is registered against a Medical Practitioner for any offence provided under Section 20, the Investigating Officer shall immediately forward the case to the Expert Panel constituted under Section 18 and he shall continue the investigation only as provided under sub-section(3) of Section18.

20. Duty of Medical Practitioner.- It shall be the duty of the Medical Practitioner attached to a hospital to provide Medical treatment to a person referred to in sections 3 to8 and any violation thereof shall be deemed to be an offence.

21. Duty of an owner or operator of ambulance or an agency running an ambulance service .- It shall be the duty of an owner or operator of an ambulance or an agency running an ambulance service to provide ambulance to a person referred to in Sections 3 to 8 or a victim referred in clause(o) of Section 2 whenever a bonafide request is made in this behalf and any refusal thereof shall be deemed to be an offence.

22. Penalty.- Any person responsible for the management of a hospital who refuses to perform all or any of the duties referred to in Sections 3 to 9 or any medical practitioner who refuses to perform the duties referred to in Section 20 or any person responsible for running ambulance service or owner or operator of ambulance who refuses to

perform his duty referred to in Section 21 shall, on conviction by a Judicial Magistrate of First Class, be punished with imprisonment for a term which may extend to one year or with fine which may extend to Rupees Twenty Five Thousand or with both.

23. Cancellation of Licence.- Any hospital refusing to perform the duties referred to in sections 3 to 9 without reasonable cause may in addition to the penalty provided under section 22, be proceeded against for suspension or cancellation of its license under which it is running the hospital.

24. Disciplinary Action.- Any medical practitioner attached to a hospital who refuses to perform the duties provided under Section 3 to 9, without reasonable cause may in addition to the penalty provided under section 22, be subjected to such disciplinary action as may be determined by the Medical Council of the State.

25. Overriding effect of the Act.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

26. Power to remove difficulties.- If any difficulty arises in giving effect to the provision of this Act, the Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

27. Power to make rules.- (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature Assembly while it is in session, for a

total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

- 1) The number of accidents resulting in deaths and serious injuries to victims are on the rise in the State. During the Golden Hour, there is a higher likelihood of saving the lives of victims involved in accidents and those who are in emergency medical condition.
- 2) There is an immediate need for enacting a law providing for immediate medical care to persons in emergency medical condition and to victims of accidents, and to motivate the bystanders to come forward to help the victims by taking them to nearest hospitals for medical treatment.
- 3) In medical terminology, the term ‘Golden Hour’ also known as golden time refers to a period lasting for one hour following an accident or traumatic injury being sustained by a person when emergent medical care is not likely to be successful. A large number of people are unwilling to help the injured involved in accidents. The reason for citizens’ inaction ranges from fear of harassment by police, payment of cost of medical treatment in hospitals, etc.
- 4) The subject “public health and sanitation; hospitals and dispensaries” falls within Entry 6 of List II (State List) in the Seventh Schedule of the Constitution. It is therefore for the State Legislatures to enact a law on the subject. The Government of Kerala has already initiated several measures in the health care sector, in order to make health care accessible and affordable to all and also to ensure that the quality of health care is substantially improved. The absence of suitable legislation to provide emergency medical care to the needy and also to protect the Good Samaritans appears to be a serious hurdle in achieving the objectives of the Government in this sensitive area.

Hence the Bill.

