



## **COVID-19: Recommendations for Pursuing Liability Protections Through State Action**

As a result of COVID-19, the provision of health care across the country has rapidly shifted based on guidance and recommendations from the [Centers for Disease Control](#), federal, state, and local directives as well as the availability of equipment, resources, space, and health care professionals. While necessary, these measures have raised concern about the potential liability of physicians and other health care professionals as they continue to provide high quality patient care, while adhering to these recommendations and directives. In areas of the country that have experienced a surge in COVID-19 patients, this care may be provided without the appropriate or optimal equipment, supplies or health care team members. While existing federal and state laws provide important protections to health care professionals, particularly volunteer physicians, more needs to be done to protect physicians across the country. Among those most in need of protection are the physicians who are on the front lines providing care to COVID-19 patients, those who have shifted their practices to telemedicine, and those whose treatment decisions may have been based on government directives.

### **Current State Liability Protections for Physicians Providing Care in an Emergency**

Federal and state protections currently exist for volunteer physicians, including Good Samaritan statutes and laws that provide civil immunity to volunteer physicians for care provided in a public health emergency, state of emergency, or other state declared disaster proclamation issued by Governors. Many states have also enacted compacts or uniform laws that include some liability protections for volunteers, such as the Emergency Management Assistance Compact (EMAC), which eases the deployment of resources from one state to another state with a declared emergency. EMAC provides protection to personnel from the rendering state by deeming them agents of the requesting state, thereby covering them under the Tort Claims Act of the requesting state. The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) also grants immunity from civil liability to out-of-state licensed health professionals for gratuitous care provided in a declared emergency. Click [here](#), for more information on existing federal and state liability protections during COVID-19.

In a letter to the Governors on workforce solutions to address COVID-19, U.S. Department of Health & Human Services Secretary Alex Azar encouraged them to develop a list of liability protections for in-state and out-of-state physicians, including volunteers and relicensed, or recently licensed medical professionals. He also recommended that Governors have their state insurance commissioner work with insurers to have them waive policy provisions that would inhibit a health care professional's efforts to respond to the COVID-19 emergency in another state. The National Governors Association website is tracking state declarations and other COVID-19 responses at <https://www.nga.org/coronavirus/#states>.

### **Policy Gaps**

We encourage each state to closely review their existing civil immunity laws and consider whether such laws should be extended to fill gaps necessary to address the potential liability of physicians providing care in response to COVID-19 and/or care decisions made based on government or health care facility COVID-19 directives. For example, if states face a surge of coronavirus patients, physicians may be asked to provide care outside their specialty, may need to utilize equipment or

supplies outside their normal use, and/or may need to restrict the use of supplies or equipment, such as respirators, based on shortages. Even physicians who are not providing care directly to coronavirus patients could face future liability based on federal, state, local or facility directives related to COVID-19, such as directives aimed at restricting elective or non-emergency procedures. The best way to address the potential future liability of physician is through broad protections, such as the following recommendations in the AMA's [policy options for states to address COVID-19](#). These include providing physician (and facility) immunity from civil liability for harm:

- caused in the course of providing medical services in response to the COVID-19 outbreak
- caused by volunteer physicians acting in good faith for care provided in response to COVID-19.
- resulting from a federal, state or local directive, including but not limited to those to cancel, delay, or deny care as a result of the COVID-19 pandemic.

States may also consider providing immunity to physicians for adverse action by a state medical board for the above actions.

### **Appropriate Vehicle to Implement Policy**

Once the policy gaps are identified, states must consider the appropriate mechanism to address the gap, including an Executive Order or state legislation. Governors in 35 states have the authority to amend statutes or regulations by Executive Order during a declared emergency or disaster. If your Governor has this authority, the next step is determining which statute to modify.

- **Good Samaritan Statutes:** One option is your state's, Good Samaritan or other civil immunity statute. This was the vehicle used by New York [Governor Andrew Cuomo](#) to extend broad civil immunity to healthcare professionals for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the state's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional.
- **Uniform Emergency Volunteer Health Practitioners Act (UEVHPA):** If you are one of 19 states that have enacted the UEVHPA, you may consider asking the Governor to amend this language to extend the liability and other protections included in the UEVHPA to physicians in the state and/or non-volunteer physicians.
- **Emergency Management Assistance Compact (EMAC) or other Emergency Management law:** States could extend the liability protections included in EMAC or other emergency management laws.

It's important to note, however, Executive Orders are temporary measures with a specific end date. While a good first step, long-term protections may still be necessary through state legislation. State legislation would address future emergencies as well. However, many state legislatures have already adjourned for the year or have suspended their session due to COVID-19. It is unclear at this time how many may reconvene to address these and other COVID-19 related issues.

### **Sample Language**

The following language could be used in your efforts to seek Executive Orders or state legislation:

- Physicians (may also include hospitals/facilities or other health care professionals) shall be immune from civil liability for any injury or death alleged to have been sustained directly as a

result of an act or omission by such physician (or health care professional and/or health care facility) in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such physician (or health care professional and/or health care facility).

- Physicians (may also include hospitals/facilities or other health care professional) shall be immune from civil liability for any injury or death alleged to have been caused due to a cancellation, delay, or denial of care resulting from a governmental or health care facility order, directive, guidance, policy, or procedure, or otherwise in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such physician (or health care professional).
- During a state of public health emergency, any physician (may include other health care professionals or facilities) shall not be civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.
- Physicians (may include other health care professionals) shall be immune from adverse action from a state medical board for an act or omission by such physician (or health care professional) in the course of providing medical services in support of the State's response to the COVID-19 outbreak or based on a physician following a governmental or health care facility order directive, guidance, policy or procedure.

## State Examples

### *Executive Orders*

[New York](#) – civil immunity for all health care professionals

[Illinois](#) – civil immunity for all health care professionals and facilities

[Connecticut](#) – civil immunity for all health care professionals and facilities. Includes language about the impact of the lack of resources on the level or manner of care.

### *Legislation*

[Kentucky](#) – civil immunity for care provided to a COVID-19 patient

[New York](#) – Sec. GGG of NYS 2020-2021 budget expands the protections provided in the Executive Order

## Other links

[Policy Options for States to Address COVID-19 \(AMA\)](#)

[Liability Protections for Health Care Professionals during COVID-19 \(AMA\)](#)

[Potential Legal Liability for Withdrawing or Withholding Ventilators during COVID-19 \(AMA\)](#)

[COVID-19 Liability Talking Points \(MPL Association\)](#)

[Model Legislation – Full Immunity \(MPL Association\)](#)

[Model Legislation – COVID-19 Care Immunity \(MPL Association\)](#)