

State-Level COVID-19 Liability Protections

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Liability protections for health care workers (HCWs) are a consistent facet of emergency declarations and response at the federal and state levels. In response to COVID-19, states are extending liability protections for physicians and other HCWs in manifold ways.

At the federal level, for example, on March 20, 2020, [Health and Human Services Secretary Alex Azar declared](#) that pursuant to the Public Readiness and Emergency Preparedness Act (PREP Act), a covered person's activities related to medical countermeasures against COVID-19 are immune from liability under federal and state law. In a [March 24 letter](#), Secretary Azar encouraged governors to develop a list of liability protections for in-state and out-of-state physicians, volunteers, relicensed medical professionals, telehealth providers, and services implicated in expanded scopes of practice. States should "provide guidance on liability protections available to health care professionals" and work with state insurance commissioners to "modify or temporarily rescind any provision ... that may prevent insurance coverage of a health care professional's work."


State public health and other emergency declarations issued in response to COVID-19 vary in breadth and scope, but do not typically explicitly address liability protections for HCWs. However, as noted below, select states have issued supplementary executive orders to provide immunity.

Arizona – [Executive Order 2020-27](#) (April 9, 2020): Immunizes licensed health care professionals and volunteer health professionals registered and recruited through the Arizona Emergency System for the Advance Registration of Volunteer Health Professions (AZ-ESAR-VHP) "in the course of providing medical services in support of the State's public health emergency for COVID-19." Covered providers are "presumed to have acted in good faith" and are "immune from civil liability." Protections also extend to Emergency Medical Care Technicians, health care institutions, and modular field treatment facilities.

Connecticut - [Executive Order No. 7U](#) (April 5, 2020): Immunizes any health care professional or facility from civil liability for "any injury or death alleged to have been sustained because of the individual's or health care facility's acts or omissions undertaken in good faith while providing health care services in support of the State's COVID-19 response," including acts or omissions undertaken "because of a lack of resources, attributable to the COVID-19 pandemic, that renders the health care professional or health care facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic."

Illinois - [Executive Order 2020-19](#) (April 1, 2020): Defines health care facilities, health care professionals, and health care volunteers and calls for the postponement or cancelation of elective surgeries. Health care facilities, professionals, and volunteers acting in response to COVID-19 are immune from civil liability for any injury or death alleged, unless caused by gross negligence or willful misconduct.

New Jersey - [Executive Order No. 112](#) (April 1, 2020): "Any individual granted a temporary license, certificate, registration or certification to practice a healthcare profession or occupation in connection with the State's COVID-19 response, including those granted pursuant to paragraph 1 or 2 of this Order, shall be immune from civil liability for any damages alleged to have been sustained as a result of the



individual's acts or omissions undertaken in good faith, whether or not within the scope of the licensee's practice, in the course of providing healthcare services in support of the State's COVID-19 response, whether or not such immunity is otherwise available under current law. Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct."

New York - Executive Order [No. 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) provides broad civil immunity to HCWs 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." The EO is valid through April 22, 2020.

- Included in the 2021 state fiscal budget is the [Emergency Disaster Treatment Protection Act](#), which would grant civil and criminal liability protections to hospitals and HCWs treating COVID-19 patients. The bill not only protects physicians and nurses, but hospital boards and administrators, nursing homes, and other HCWs. The immunity would expire whenever the state of emergency declared by Governor Cuomo is lifted.

Michigan - [Executive Order No. 2020-30](#) (March 29, 2020): "Consistent with MCL 30.411(4), any licensed health care professional or designated health care facility that provides medical services in support of this state's response to the COVID-19 pandemic is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained, unless it is established that such injury or death was caused by the gross negligence, as defined in MCL 30.411(9), of such health care professional or designated health care facility."

Louisiana - In addition to these executive actions, Louisiana's legislature has proposed legislation providing liability protections for HCWs.

- [SB 445](#) (pending), introduced in Senate on March 31, 2020, provides limitation of civil liability for medical personnel and healthcare providers during public health emergency.
- [HB 826](#) (pending), introduced in House on March 31, 2020, provides limited liability for healthcare providers, certain real estate owners, and some private persons, firms, or corporations during the COVID-19 public health emergency.

Virginia - [Executive Order No. 60](#) (April 28, 2020): clarifies that health care providers responding to COVID-19 are covered under the state's liability protections during emergencies under Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia. For purposes of liability protections, the order specifies that:

- "Responds to a disaster" includes "withholding of the provision of procedures, consultations or surgeries performed in an inpatient or outpatient surgical hospital licensed under 12 Va. Admin. Code § 5-410, free-standing emergency department or endoscopy center, physicians' office, or dental, orthodontic, oral surgeon, or endodontic offices that require PPE, the delay of which was not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death."
- "Emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency" includes: "(i) insufficient availability of PPE, ventilators, or other drugs, blood products, supplies or equipment; (ii) insufficient

availability of trained staff; (iii) having licensed healthcare professionals deliver care that, while included in the scope of their licensure, exceeds the scope of their credentials at the hospital or other health care facility at which they deliver services or exceeds the scope of the services that they normally provide; (iv) implementation or execution of triage protocols or scarce resource allocation policies necessitated by healthcare provider declaration of crisis standards of care; and (v) using supplies or equipment in innovative ways that are different from the way that these supplies and equipment are normally used.”

SUPPORTERS



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