

April 2, 2020

## Physician Immunity Based on Executive Order 2020-19

On April 1, Governor Pritzker issued an Executive Order extending civil immunity protections to health care professionals and health care volunteers working in health care facilities as defined by the order.

Under the order, certain health care facilities, health care professionals, and health care volunteers are **immune from civil liability** for any injury or death alleged to have been caused by an act or omission by the facility, professional, or volunteer while they were engaged in the course of rendering assistance to the State in response to the COVID-19 outbreak, unless the injury was caused by gross negligence or willful misconduct.

The order applies to certain health care professionals, health care volunteers, and health care facilities. Health care professionals are physicians and all licensed or certified health care or emergency services workers who provide health care services at a health care facility in response to the COVID-19 outbreak OR are working under the direction of the Illinois Emergency Management Agency (IEMA) or Illinois Department of Public Health (IDPH).

Health care volunteers include volunteers or medical or nursing students who are unlicensed and are providing services or support at a health care facility or under the direction of IEMA or IDPH. Health care facilities include hospitals, ambulatory surgical treatment centers, federally qualified health centers, skilled and intermediate long-term care facilities, and any government-operated site providing health care services in order to respond to the COVID-19 outbreak, among others. For a detailed summary of the Executive Order, please see the end of this document starting on page 3.

Commonly-asked questions:

1. Does this immunity apply to physicians who are treating COVID-19 patients only?
  - a. It appears that this is not limited to treating COVID-19 patients only; the language in the Executive Order states it applies to health care facilities, professionals, and volunteers providing services "in response to the COVID-19 outbreak"; that language is broad enough to include patients that have COVID-19 and those that do not.

2. Can physician offices be considered an extension of a “health care facility” in treating COVID-19 and assisting the State in its emergency response to protect the public?
  - a. Physicians are provided civil immunity when volunteering or rendering assistance as provided in the Executive Order. No immunity is specifically provided for private practices. Physicians are best protected against an allegation of negligence related to COVID-19 by following CDC guidelines in their practices. The Governor did not extend specific immunity beyond the Good Samaritan Act and IEMA Act, but he clarified the application of these to the instant situation.
3. Treating, evaluating, and diagnosing patients in the office setting is still occurring and medical judgments are being made whether to test for COVID-19 or not to test based upon CDC and IDPH directives. Is the “working under the direction of the IEMA or IDPH” in response to the disaster proclamation broad enough to cover physicians in their office practices?
  - a. Possibly, if the physicians are following specific directives such as the guidelines for testing, resource conservation, or the IDPH COVID-19 Elective Surgery Procedure guideline.
4. Does this prevent physicians from being sued?
  - a. No, this does not prevent physicians and other health care professionals and volunteers from being sued. However, it does provide a defense and possible exoneration from those lawsuits.

## Detailed Summary of Executive Order 2020-19

On April 1, Governor Pritzker issued an Executive Order extending immunity protections to certain health care professionals and health care volunteers working in health care facilities as defined by the order.

### To whom does it apply?

- Health care professionals:
  - Physicians and all licensed or certified health care or emergency medical services workers who:
    - Are providing health care services at a health care facility in response to the COVID-19 outbreak and are authorized to do so; OR
    - Are working under the direction of the Illinois Emergency Management Agency (IEMA) or Illinois Department of Public Health in response to the disaster proclamation
- Health care volunteers:
  - All volunteers or medical or nursing students who do not have licensure who:
    - Are providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak and are authorized to do so; OR
    - Are working under the direction of the Illinois Emergency Management Agency (IEMA) or Illinois Department of Public Health in response to the disaster proclamation
- Health care facilities:
  - Ambulatory surgical treatment centers
  - Hospitals
  - Skilled and intermediate long-term care facilities licensed under the Nursing Home Care Act or ID/DD Community Care Act or the MC/DD Act
  - Facilities licensed under the Specialized Mental Health Rehabilitation Act of 2013
  - Hospitals, nursing homes, ambulatory surgical treatment centers, or kidney disease treatment centers maintained by the State or any department or agency
  - Facilities covered by the University of Illinois Hospital Act, the Alternative Health Care Delivery Act, the Emergency Medical Services (EMS) Act, and the Department of Veterans' Affairs Act
  - State-operated developmental centers and licensed state-operated Mental Health Centers
  - Licensed community-integrated living arrangements
  - Licensed community mental health centers

- Federally qualified health centers
- Any government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak

**What does the order provide?**

- Directs health care facilities, health care professionals, and health care volunteers to “render assistance”:
  - For health care professionals, “rendering assistance” means providing health care services at a health care facility in response to the COVID-19 outbreak, or working under the direction of IEMA or IDPH
  - For health care volunteers, “rendering assistance” means providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak or working under the direction of IEMA or IDPH
  - For health care facilities, “rendering assistance” means cancelling or postponing elective surgeries and procedures, and includes measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19

**What immunity protections does it include?**

- Health care facilities, health care professionals, and health care volunteers are immune from civil liability for any injury or death alleged to have been caused by an act or omission by the facility, professional, or volunteer while the facility, professional, or volunteer was engaged in the course of “rendering assistance” to the State in response to the COVID-19 outbreak, unless the injury was caused by gross negligence or willful misconduct.