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Illinois Health Care Providers Granted Immunity From Civil Liability for Injury or Death in COVID-19 Related Care

Illinois health care facilities, health care providers and health care volunteers providing care at health care facilities, have been granted immunity from civil liability for any injury or death related to any act or omission which occurred in providing care in response to the COVID-19 outbreak in the absence of gross negligence or willful misconduct.

Illinois Governor JB Pritzker issued Executive Order 2020-19 effective April 1, 2020. His Order conditioned the immunity for health care facilities on their “rendering assistance” in support of the State’s response to the outbreak. Governor Pritzker’s Order follows a related March 7 New York order limiting civil liability. Rendering assistance must include the following:

- Canceling or postponing elective surgeries and procedures
- Increasing the number of available beds
- Preserving Personal Protective Equipment
- Taking necessary steps to prepare to treat patients with COVID-19

Health care facilities affected include hospitals, nursing homes, licensed surgery centers, dialysis centers, federally qualified health centers, and many governmental sponsored providers.

The immunity granted in the Executive Order is not limited to care rendered to patients diagnosed with COVID-19. Instead, the immunity extends to any injury or death which occurred at a time when a health care professional “was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak...”

In turn, rendering assistance is defined as “providing health care services *at a Health Care Facility* in response to the COVID-19 outbreak, or working under the direction of the Illinois Emergency Management Agency or the Department of Public Health.”

Under traditional Illinois malpractice law, professional negligence is defined as a deviation from the standard of care, or when a professional fails to act as a reasonably careful provider would do under similar circumstances. Under the Executive Order, exposure to liability requires “gross negligence,” a much higher standard, which is considered to be an utter indifference or conscious disregard for the safety of others.

The full text of EO 2020-19 can be found at <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-19.aspx>

Saul Ewing Arnstein & Lehr attorneys regularly assist health care providers and facilities with regulatory and other matters, including litigation. If you have any questions or need additional information, please reach out to Joe Ourth, David Waxman, or other members of the Health Care Practice.

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