

## States Providing Liability Immunity to Health Care Providers in the Face of COVID-19

JUNE 15, 2020

*This blog was originally written as a client alert on April 7, 2020.*

While various federal agencies are providing immunity to liability for manufacturers and distributors of certain COVID-19 drugs and products, some states are likewise taking significant steps to grant immunity to those involved in the fight against the pandemic.

### ILLINOIS

On April 1, 2020, Illinois Governor J.B. Pritzker issued an executive order under the Illinois Emergency Management Agency Act granting health care facilities, health care professionals, and health care volunteers immunity from civil liability for any injury or death that occurs at a time when the facility or provider was providing health care services in response to COVID-19. The immunity does not extend to injuries caused by gross negligence or willful misconduct.

Executive Order 2020-19, authorized by the Illinois Emergency Management Agency Act, covers “health care facilities” that are licensed, certified, or state agency-approved hospitals, state-operated developmental centers, licensed community-integrated facilities, or mental health centers, among others. The Executive Order includes in the definition of “health care facilities” any government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak, so that new emergency hospitals are expected to be covered as well. It also extends immunity to health care providers and health care volunteers, covering licensed or certified health care or emergency medical services workers, as well as volunteers or medical or nursing students. The Executive Order provides that all health care facilities and health care professionals will be immune from civil liability for any injury or death allegedly caused “in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak,” specifying that this liability does not apply to injuries caused by gross negligence or willful misconduct. It also establishes a slightly more relaxed standard for volunteers, providing health care volunteers immunity from civil liability for any injury or death allegedly “caused while rendering assistance to the State by providing services, assistance, or support in response to the COVID-19 outbreak” unless the injury or death was caused by willful misconduct.

# NEW JERSEY/NEW YORK

Other states, such as New Jersey and likely New York, are taking similar steps. On April 1, 2020, New Jersey Governor Philip D. Murphy issued a broad executive order providing that, among other things, any licensed health care provider will be immune from civil liability for damages alleged to have been sustained as a result of their acts or omissions “undertaken in good faith” in connection with the State’s COVID-19 response. That immunity does not extend to acts or omissions that “constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.” Immunity extends to any health care facility within the meaning of NJSA 26:13-2 and other sites designated by the Commissioner of the Department of Health for temporary use for the purpose of providing “essential services” in support of the COVID-19 response. Likewise, in New York, the State Senate and Assembly have passed, and Governor Andrew Cuomo has signed, the “Emergency Disaster Treatment Protection Act” as part of the budget bill. The measure grants immunity from civil and criminal liability to New York health care facilities, health care professionals, and volunteer organizations for the purpose of “promot[ing] the public health, safety and welfare of all citizens” in light of the pandemic. This immunity does not apply to acts or omissions that “were caused by the willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.” Notably, the Act specifies that a resource or staffing shortage shall not be considered to be “willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.”

## ADDITIONAL MEASURES

The recent administrative Declaration from the U.S. Department of Health and Human Services under the Public Readiness and Emergency Preparedness Act (the “PREP Act”) [provides broad-based legal immunity under both federal and state law for manufacturers, suppliers, and administrators of certain products and technologies used to combat COVID-19.](#) It is highly likely that other states (in addition to Illinois, New Jersey, and New York) will soon follow suit in exercising emergency powers to support those responding to this pandemic, but the question remains about who these states will ultimately protect.

For any questions regarding the impact of these orders, please contact Sandra Edwards, Sarah Krajewski, John Drosick, or your Winston relationship attorney.

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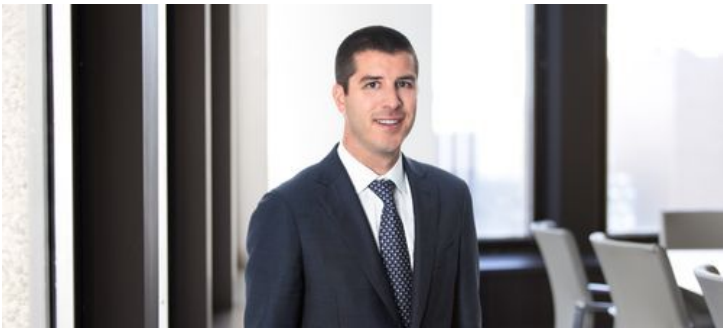
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## Related Professionals

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