

# CORONAVIRUS INFORMATION & UPDATES

April 9, 2020

## Illinois Grants Civil Liability Immunity for Certain Health Care Providers in the Fight Against COVID-19

On April 1, 2020, Governor J.B. Pritzker issued [Executive Order 2020-19](#) (the “Executive Order”) granting immunity from civil liability to Health Care Professionals, Facilities and Volunteers assisting in the fight against COVID-19 in Illinois. The Executive Order offers much needed clarity for health care professionals [interested in applying for license reinstatement](#) or otherwise assisting the state’s COVID-19 response efforts. Importantly, the Executive Order defines the categories of Health Care Professionals, Health Care Facilities, and Health Care Volunteers (collectively, “Providers”) who will, with limited exceptions, be immune from civil liability for any injury or death occurring while providing health care services in response to the COVID-19 outbreak, regardless of whether a Provider receives compensation for the services provided.

### 1. How Does the Executive Order Affect Civil Liability Under State Law?

Prior to the issuance of the Executive Order, the existing [Illinois Emergency Management Act](#) and the [Illinois Good Samaritan Act](#) offered potential avenues for immunity from civil liability for Providers fighting the COVID-19 outbreak. The Executive Order applies to activities from April 1, 2020 until April 30, 2020, which coincides with the expiration of the Governor’s proclamations declaring Illinois a disaster area (the “[Gubernatorial Disaster Proclamations](#)”). The Executive Order grants immunity from civil liability to Providers for any death or injury alleged to have been caused by any act or omission of such Provider so long as the death or injury occurred during the covered time period and only when the Provider was providing health care services in the course of rendering assistance in support of Illinois’s response to the COVID-19 outbreak.

Immunity does not, however, protect a Provider from any death or injury caused by the Provider’s willful misconduct and, in some cases, by gross negligence as well.<sup>1</sup> It remains to be seen how this immunity may be tested by litigators in the coming months, but this standard sets a high bar and should provide some comfort for Providers.<sup>2</sup>

### 2. To What Providers Does the Executive Order Apply? The Executive Order applies to (i) Health Care Professionals, (ii) Health Care Facilities, and (iii) Health Care Volunteers.

- a. **Health Care Professionals** are defined as licensed or certified health care or emergency medical services workers who (i) are providing health care services at a health care facility in response to the COVID-19 outbreak

<sup>1</sup> If the Provider is a private actor “rendering assistance” to the state, the Executive Order does not protect the Provider for any death or injury caused by willful misconduct. If the Provider is working for the state or a state-run facility, the Executive Order does not protect the Provider for any death or injury caused by gross negligence or willful misconduct.

<sup>2</sup> Section 3215 of the [Coronavirus Aid, Relief, and Economic Security Act](#) (the “[CARES Act](#)”) offers a baseline for immunity from liability for health care professionals providing health care services to COVID-19 patients. However, the CARES Act’s protections only apply to individuals licensed to perform health care services that perform such services in a volunteer capacity. The Executive Order goes further than the CARES Act, offering immunity to health care facilities, paid health care providers, and unlicensed volunteers.

# CORONAVIRUS

## INFORMATION & UPDATES

and are authorized to do so, or (ii) are working under the direction of the Illinois Emergency Management Agency (the “IEMA”) or the Illinois Department of Public Health (the “IDPH”) in response to the Gubernatorial Disaster Proclamations. This definition appears to be intentionally broad to ensure applicability so long as the professional has a license or certification.

- b. **Health Care Facilities** are defined to include (i) ambulatory surgical treatment centers; (ii) acute care, psychiatric and maternity care-focused hospitals; (iii) skilled and immediate long-term care facilities (nursing homes); (iv) facilities licensed under the ID/DD Community Care Act or the MC/DD Act; (v) facilities licensed under the Specialized Mental Health Rehabilitation Act of 2013; (vi) kidney disease treatment centers; (vii) federally qualified health centers; (viii) the University of Illinois hospital system; (ix) licensed community-integrated living arrangements; (x) licensed community mental health centers; (xi) facilities licensed under the Illinois Alternative Health Care Delivery Act; (xii) facilities licensed under the Illinois Emergency Medical Systems Act; (xiii) facilities licensed under the Illinois Department of Veterans’ Affairs Act; (xiv) certain state-run facilities;<sup>3</sup> (xv) certain other facilities subject to the Illinois Health Facilities and Services Review Board’s jurisdiction;<sup>4</sup> and (xvi) any government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak.
- c. **Health Care Volunteers** are defined as unlicensed individuals, including medical and nursing students that (i) 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 (ii) are working under the direction of IEMA or IDPH in response to the Gubernatorial Disaster Proclamations.

### 3. What Constitutes “Rendering Assistance” in Support of the State’s Response?

For Health Care Facilities, “rendering assistance” means (1) cancelling or postponing elective surgeries or procedures pursuant to IDPH’s [guidance](#) concerning elective surgical procedures;<sup>5</sup> and (2) taking measures such as increasing the number of beds, preserving personal protective equipment, and taking necessary steps to prepare to treat patients with COVID-19.

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 in response to the Gubernatorial Disaster Proclamations.

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 in response to the Gubernatorial Disaster Proclamations.

<sup>3</sup> Such facilities include state-run hospitals, ambulatory surgical treatment centers, kidney disease treatment centers, developmental centers certified by the federal Centers for Medicare and Medicaid Services and licensed state-operated mental health centers.

<sup>4</sup> Such facilities include outpatient surgical facilities that are leased, owned, or operated by or on behalf of an out-of-state facility; locations used for services subject to Illinois’s certificate of need review process, such as cardiac catheterization and end stage renal dialysis; and locations for the direct clinical diagnosis or treatment of patients using major medical equipment that was subject to Illinois’s certificate of need process at the time of its acquisition.

<sup>5</sup> Defined as procedures that are pre-planned by the patient and the physician that are advantageous to the patient, but not urgent or emergent.