

National Survey of COVID-19 Medical Malpractice Immunity Legislation (As of May 24, 2021)

24 May 2021

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(as of May 24, 2021) [\[1\]](#)

The below survey of federal and state legislation, guidance, and executive action provides information regarding enacted and proposed legislation and executive orders issued to provide immunity protections for liability, in certain respects, to health care professionals, facilities, and volunteers in the course of their treatment of individuals during the course of the COVID-19 pandemic and the declared national and state emergencies. The information provided herein is a summary of the relevant portions of the proposed and enacted legislation and executive orders and is subject to change.

FEDERAL

- [Coronavirus Aid, Relief and Economic Security Act \("CARES Act"\), Pub. L. 116-136 \(March 27, 2020\)](#).

Status: Enacted (March 27, 2020).

Person(s) Covered: Volunteer healthcare professionals.

Conduct Covered: Errors or omissions causing harm (simple negligence).

Conduct Not Covered: Willful or criminal misconduct; gross negligence; reckless misconduct; conscience flagrant indifference to the rights or safety of the individual; rendering of medical care under the influence of alcohol or intoxicating drugs.

Effective Date(s): From date of enactment, March 27, 2020, and only for the length of the public health emergency declared by the Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020 with respect to COVID-19.

Summary: Section 3215, Limitation on Liability for Volunteer Health Care Professionals During COVID-19 Emergency Response, preempts state law and provides immunity from federal and state malpractice lawsuits to healthcare professionals who volunteer to provide medical care during the COVID-19 national public health emergency and, through an act or omission of the professional, cause harm (physical, nonphysical, economic and noneconomic losses). To obtain the protection, the act or omission must occur (A) in the course of providing health care services, as defined; (B) in the health care professional's capacity as a volunteer, as defined; (C) in the course of providing health care services that are within the scope of their professional license, registration, or certification and do not exceed it (based on State law in which act or omission occurs) and (D) in a good faith belief that the individual being treated is in need of healthcare services, without expectation of reimbursement (with the exception of travel) or payment.

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The protections afforded are in addition to the protections afforded by the Volunteer Protection Act of 1997 (Pub. L. 105-19).

Immunity will not be available if a provider causes harm through willful or criminal misconduct, gross negligence, reckless misconduct, conscience flagrant indifference to the rights or safety of the individual, or the rendering of medical care under the influence of alcohol or intoxicating drugs (as determined pursuant to applicable State law).

- Department of Health and Human Services Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 (“PREP Act”).

Status: Published (March 17, 2020).

Person(s) Covered: Manufacturers; distributors; program planners; and qualified persons, and their officials, agents, and employees; and the United States, as defined in the Declaration.

Conduct Covered: Claims of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to COVID-19 determined by the Secretary to constitute a present, or credible risk of a future public health emergency.

Conduct Not Covered: Willful misconduct.

Effective Date(s): February 4, 2020 through (1) the final day the emergency Declaration is in effect, or (2) October 1, 2024, whichever occurs first.

Summary: The Secretary of Health and Human Services issued a Declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to provide liability immunity (except for willful misconduct) for activities related to medical countermeasures for claims of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to COVID-19 determined by the Secretary to constitute a present, or credible risk of a future public health emergency. Such immunity is given to manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States. “Qualified persons” includes a licensed healthcare professional or other individual authorized to prescribe, administer, or dispense “Covered Countermeasures” under the law of the state in which the “Covered Countermeasure” was prescribed, administered or dispensed.

The PREP Act states that a “Covered Countermeasure” must be a “qualified pandemic or epidemic product,” or a “security countermeasure,” as defined, or a drug, biological product or device authorized for emergency use in accordance with Sections 564, 564A, or 564B of the FD&C Act. “Covered Countermeasures” include any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.

The PREP Act further authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services.

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On March 24, 2020, the Secretary of Health and Human Services sent a guidance letter to state governors outlining the actions he has taken under the authority of the PREP Act and requesting that they also take immediate action on certain measures to respond to the COVID-19 pandemic. In so doing, the Secretary acknowledged that all 50 states and the District of Columbia have enacted laws protecting health care professionals under specified circumstances and that states should issue guidance summarizing the statutory scope of protections offered under their laws and the process necessary to attach those protections to a health care professional's services. The Secretary asked the states to analyze whether the state insurance commissioner could modify or temporarily rescind any provision in a medical malpractice policy issued in the state that may prevent coverage of a health care professional's work responding to COVID-19 in another state, and work with the insurers to have them waive each limitation in their policies. The Secretary further requested that the states take quick action to develop a list of the relevant state liability protections and waivers for health care professionals during a national or state emergency and provide public guidance so that health care professionals could "feel comfortable serving in expanded capacities on the frontlines of the COVID-19 emergency."

And on April 14, 2020, the General Counsel for the Department of Health and Human Services issued an Advisory Opinion clarifying the scope of liability immunity granted by the PREP Act COVID-19 Declaration published on March 17, 2020 in the Federal Register. The Opinion, which is neither binding law nor a final agency action or order, addresses the influx of questions following the release of its Declaration. Specifically, it expands on four aspects of the COVID-19 Declaration: (1) Covered Countermeasures, (2) Covered Persons, (3) liability immunity under the "Reasonable Belief" standard, and (4) liability limitations. In relevant part, the Opinion expands immunity to include persons who comply with all the other requirements of the PREP Act and the conditions of the Secretary's Declaration, even if not a "Covered Person," if the entity or individual reasonably could have believed that the person was a "Covered Person." The Opinion also puts the onus on the person seeking PREP Act immunity to determine whether their products are Covered Countermeasures, whether a person or entity is a Covered Person, whether reasonable precautions have been taken to facilitate the safe use of Covered Countermeasures, and in general, whether immunity applies to them and their activities.

NOTE: On October 23, 2020, the U.S. Department of Health and Human Services' Office of General Counsel issued, as modified, two advisory opinions, Opinions 20-03 and 20-04, interpreting the scope and application of liability immunity under the PREP Act. Opinion 20-03 addresses certain matters relating to pharmacists' and pharmacy interns' administration of vaccines recommended by the Advisory Committee on Immunization Practices. Opinion 20-04 emphasizes the breadth of PREP Act immunity and describes its potential application to, in part, medical product manufacturers and distributors, health care professionals, and other health care entities. On January 8, 2021, the General Counsel released Advisory Opinion 21-01 which addresses to what extent nursing homes and other healthcare facilities are protected under the PREP Act where patients or their estates allege that patients contracted COVID-19 because the facility, among other things, failed to provide staff with personal protective equipment, failed to teach the staff how to properly use that equipment, or failed to ensure that its staff used the personal protective equipment it was given. Although these advisory opinions are nonbinding and lack the force of law, they may inform future courts' interpretation of PREP Act immunity.

- Emergency Management Assistance Compact (EMAC), Pub. L. 104-321.

Status: Enacted (October 19, 1996).

Person(s) Covered: Officers or employees of a party state rendering aid in a requesting state pursuant to EMAC.

Conduct Covered: Tort liability and immunity in the requesting state for acts or omissions in good faith or on account of maintenance or use of any equipment or supplies in connection with EMAC.

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Conduct Not Covered: Willful misconduct; gross negligence; recklessness.

Effective Date(s): N/A

Summary: The Emergency Management Assistance Compact (EMAC) is a multi-disciplinary mutual aid compact that permits, upon gubernatorial activation, that states may receive assistance from other states. Health care providers activated as part of EMAC would be considered agents of the state for purposes of tort liability and immunity. EMAC provides that no party state or its officers or employees rendering aid in another state pursuant to EMAC will be liable on account of any act or omission in good faith on the part of such forces while engaged, or on account of the maintenance or use of any equipment or supplies in connection with EMAC.

Good faith does not include willful misconduct, gross negligence, or recklessness.

- [3372. Health Care Workforce Protection Act of 2020 \(Sen. Fischer\).](#)

Status: Read twice and referred to the Committee on Health, Education, Labor, and Pensions (Mar. 2, 2020).

Person(s) Covered: Manufacturers; distributors; prescribers; and users.

Conduct Covered: Claims of loss caused, arising out of, relating to, or resulting from administration or use of certain respiratory protective devices as covered countermeasures.

Conduct Not Covered: Willful misconduct.

Effective Date(s): N/A

Summary: The Bill seeks to amend the Public Health Service Act to provide for treatment of certain respiratory protective devices as covered countermeasures for purposes of targeted liability protections for pandemic and epidemic products and security countermeasures, and for other purposes.

Willful misconduct has the meaning given it in the PREP Act.

- [3630. Facilitating Innovation to Fight Coronavirus Act \(Sen. Sasse\).](#)

Status: Introduced (May 6, 2020), read twice, and referred to the Committee on the Judiciary.

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability in any federal, state, or local proceeding.

Conduct Not Covered: N/A

Effective Date(s): During the duration of the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to that disease.

Summary: The bill proposes that no health care provider, as defined in 3000(j) Public Health Services Act, 42 U.S.C. 300jj(3)), should be liable in any federal, state, or local civil proceeding for (1) using or modifying a medical device for an unapproved use or indication; (2) practicing without a license or outside of an area of specialty if instructed to do so by

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an individual with such a license or with such an area of specialty; or (3) conducting the testing of, or the provision of treatment to, a patient outside of the premises of standard health care facilities, where such action was carried out to test, treat, or otherwise counter the effects of COVID-19 during the duration of the national emergency declared by the President with respect to COVID-19.

ALABAMA

- AL Code § 31-9-16. Immunity of state, etc., from liability for torts resulting from emergency management activities; exemptions of emergency management workers from license requirements; powers, duties, etc., of emergency management workers (Alabama Emergency Management Act of 1955).

Status: Enacted (Current through Act 2020-38).

Person(s) Covered: State; political subdivision of the State; agencies of the State or political subdivision thereof; emergency management workers; individuals; partnerships; associations; corporations.

Conduct Covered: Liability for death of or injury to persons, or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith. (Not applicable to state and political subdivision.).

Effective Date(s): 1955.

Summary: AL Code § 31-9-16(a) designates all functions under Article 1 of the Alabama Emergency Management Act of 1955 as AL Code § 31-9-16(b) provides immunity from liability for torts resulting from emergency management activities and declares that emergency management workers (state employees and volunteers), individuals, partnerships, associations, or corporations complying with or reasonably attempting to comply with any order, rule, or regulation promulgated pursuant to the Alabama Emergency Management Act or other precautionary measures enacted by any political subdivision of the state, will not be liable for injury, death, or damage related to such activity.

Immunity will not be applicable in cases of willful misconduct, gross negligence, or bad faith for emergency management workers, individuals, partnerships, associations, and corporations.

“Emergency management” as defined by AL Code § 31-9-3(1), includes the preparation for and the carrying out of all emergency functions, other than military and other federal agency functions, to prevent, minimize, and repair injury and damage resulting from disasters caused by, in relevant part, a natural cause. The functions of emergency management include, in relevant part, medical and health services and rescue, and other functions related to civilian protection.

“Emergency management worker” as defined by AL Code § 31-9-16(d), includes any full- or part-time paid, volunteer, or auxiliary employee of the state, or other states, territories, possessions, or the District of Columbia, of the federal government, or any neighboring county or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in the state subject to the order or control of, or pursuant to, a request of, the state government or any political subdivision thereof. And pursuant to AL Code § 31-9-16(e), any “emergency management worker” possesses the same powers, duties, immunities, and privileges he or she would ordinarily possess if performing duties in the state, province, or political subdivision in which the emergency management worker is normally employed or rendering services.

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AL Code § 31-9-23 provides that Article 1 should be construed liberally to effectuate its purpose.

- Alabama Senate Bill No. 30. Coronavirus. Immunity for Certain Entities from Claims Relating to Contraction of or Exposure to Coronavirus.

Status: Enacted (February 12, 2021).

Person(s) Covered: Business, Health Care Provider, Educational Entity, Church, Government Entity, Cultural Institution.

Conduct Covered: Civil liability resulting from any act or omission.

Conduct Not Covered: Wanton, reckless, willful, or intentional misconduct.

Effective Date(s): Retroactively from March 13, 2020 to December 31, 2021, or one year after a declared health emergency relating to coronavirus expires, whichever is later.

Summary: The bill provides civil immunity protection for covered entities against any “health emergency claim”. A “covered entity” includes any business, health care provider, educational entity, church, government entity, cultural institution, or its agent. The bill defines “health emergency claims” as any claim that arises from is related to Coronavirus, including, but not limited to: “(a) alleged, actual, or feared exposure on a premises or arising from operation, products or services provided off-premises; (b) efforts to prevent or delay the spread of coronavirus, such as testing, monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating exposures or other information, or using or supplying precautionary equipment or supplies, such as personal protective equipment.”

Immunity does not extend to wanton, reckless, willful, or intentional misconduct. A covered entity is not liable unless the claimant can show by clear and convincing evidence that the covered entity did not reasonably attempt to comply with the then applicable public health guidance. “Applicable public health guidance” is defined as any proclamation, order, or rule Governor, the State Health Officer, or State Board of Health that is applicable to the type of covered entity and to the health emergency claim at issue. If a covered entity is found liable damages are limited to actual economic compensatory damages and punitive damages are only recoverable in wrongful death claims.

Health care providers, specifically, cannot be found liable for any act or omission of any health services negatively impacted by a lack of resources caused by the pandemic or the state’s response to the pandemic. If found liable damages are limited to actual economic compensatory damages only.

ALASKA

- AS 09.65.091. Civil Liability for Responding to Disaster.

Status: Enacted (current through March 26, 2020).

Person(s) Covered: Persons.

Conduct Covered: Liability for the death or injury of any person; damage to property caused by that person’s actions.

Conduct Not Covered: Intentional acts; reckless acts; gross negligence.

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Effective Date(s): Current through March 26, 2020.

Summary: AS §09.65.091 provides that a person who provides equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other governmental agency during a state of emergency declared by an authorized representative of the state or local government, will not be liable for the death of or injury to any person or damage to any property caused by the person's actions.

There is no immunity when the trier of fact finds that the person acted intentionally, recklessly, or with gross negligence.

- [2019 Alaska Senate Bill No. 241, Extending COVID 19 Declaration/Relief.](#)

Status: Enacted (April 10, 2020).

Person(s) Covered: Health care provider; manufacturer of personal protective equipment.

Conduct Covered: Civil liability resulting from an act or omission.

Conduct Not Covered: Gross negligence; recklessness; intentional misconduct.

Effective Date(s): March 11, 2020 to November 15, 2020.

Summary: The bill amends the uncodified law of Alaska to add a new section entitled LIABILITY: PERSONAL PROTECTIVE EQUIPMENT. The new section reads that in addition to the immunity available under AS 09.65.091 (above), and during the COVID-19 public health disaster emergency declared by the governor on March 11, 2020, a health care provider or manufacturer of personal protective equipment is not liable for civil damages resulting from an act or omission in issuing, providing, or manufacturing personal protective equipment in the event of injury or death to the user of the personal protective equipment if the personal protective equipment was issued, provided, or manufactured in good faith to respond to the COVID-19 public health disaster emergency.

Immunity does not extent for civil damages as a result of gross negligence, recklessness, or intentional misconduct. The health care provider or manufacturer of personal protective equipment must notify the user of the personal protective equipment that the equipment may not meet established federal standards and requirements.

"Health care provider" has the meaning given in AS 18.15.395 (which includes any person providing health care services, hospitals, medical clinics or offices, special care facilities, medical laboratories, and emergency medical works) and a nursing home.

- [Alaska H.B.76, Extending COVID 19 Disaster Emergency](#)

Status: Enacted (May 1, 2021).

Person(s) Covered: State agencies and employees, licensed professionals, businesses and business employees

Conduct Covered: Civil liability resulting from an act or omission.

Conduct Not Covered: Gross negligence; recklessness; intentional misconduct.

Effective Date(s): Retroactive March 11, 2020

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Summary: House Bill 76 ensures the continuation of COVID-19 federal relief to impacted Alaskans and liability protections for Alaska businesses and state agencies and employees. The bill provides for civil and criminal immunity for acts performed in good faith based by state agencies and state employees. Additionally, licensed professionals such as athletic trainers, concert promoters, dentists, therapists, physicians, nurses, nursing home administrators, pharmacists, real estate agents, social workers, and veterinarians, are immune from disciplinary action for sickness, death, economic loss, and other damages suffered from exposure to COVID-19 in the course of the licensee's practice of the licensee's trade or profession. The bill further extends civil liability immunity to businesses and business employees against claims alleging sickness, death, economic loss, or other damages from exposure to Covid-19 while patronizing the business.

Immunity does not extend to acts amounting to gross negligence, recklessness, or intentional misconduct.

ARIZONA

- R.S. § 36-790, Privileges and immunities.

Status: Enacted (Current through legislation effective March 27, 2020).

Person(s) Covered: Person; health care provider.

Conduct Covered: Civil or criminal liability if acting in good faith.

Conduct Not Covered: N/A

Effective Date(s): May 23, 2002.

Summary: A.R.S. § 36-790.B. provides that a person or health care provider undertaking any activity required by A.R.S. Title 36, Chapter 6, Article 9, Enhanced Surveillance Advisories and Public Health Emergencies, including reporting, and participating in quarantine and isolation procedures, is immune from civil or criminal liability if the person or health care provider acted in good faith.

Subsection C. further provides that the immunities prescribed in A.R.S. § 26-314 for state, political subdivisions and officers, agents, employees and emergency workers extends to § 36-787 (public health authority), § 36-788 (isolation and quarantine), and § 36-789 (due process for isolation) during a state of emergency or state of war emergency.

- Executive Order 2020-13, Enhanced Surveillance Advisory **COVID-19**.

Status: Issued (March 23, 2020).

Person(s) Covered: Person; health care provider.

Conduct Covered: Civil or criminal liability if undertaking any activity required by the Enhanced Surveillance Advisories and Public Health Emergencies provisions of the Arizona Code, including reporting, and acting in good faith.

Conduct Not Covered: N/A

Effective Date(s): March 23, 2020 and effective for 60 days therefrom unless extended.

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Summary: Executive Order 2020-13 identifies that pursuant to A.R.S. § 36-790(B), a person or health care provider undertaking any activity required by A.R.S. Title 36, Chapter 6, Article 9, which is the Enhanced Surveillance Advisories and Public Health Emergencies (“ESAPHE”) provisions of the Arizona Code, is immune from civil or criminal liability if the person or health care provider acted in good faith. The immunity extends to the undertaking of reporting, as defined by the ESAPHE.

- [Executive Order 2020-27, The “Good Samaritan” Order Protecting Frontline Healthcare Workers Responding to the COVID-19 Outbreak; Executive Order 2020-42, Renewal of Executive Order 2020-27, The “Good Samaritan” Order.](#)

Status: Issued (April 9, 2020); Issued (June 25, 2020).

Person(s) Covered: Arizona healthcare professionals; volunteer healthcare professionals; Arizona Emergency Medical Care Technician; Arizona healthcare institutions; any entity operating a modular field treatment facility; any other site whether or not it is a licensed healthcare institution designated by the Director of the Arizona Department of Health Services for temporary use.

Conduct Covered: Civil liability for triage decisions made in the course of providing medical services based on a good faith reliance of mandatory or voluntary state-approved protocols and acts or omissions undertaken in good faith while providing healthcare services, all in support of the State’s public health emergency declaration for COVID-19.

Conduct Not Covered: Gross negligence or reckless or willful misconduct including, but not limited to, rendering medical care services under the influence of alcohol or an intoxicating drug.

Effective Date(s): April 9, 2020 through December 31, 2020 (as extended by Executive Order 2020-42).

Summary: Executive Order 2020-27 provides immunity from civil liability for triage decisions made in the course of providing medical services based on good faith reliance of mandatory or voluntary state-approved protocols for an Arizona healthcare professional, a licensed Emergency Medical Care Technician, a licensed Arizona health care institution, an entity operating a modular field treatment facility, or any other site whether or not it is licensed if it is designated by the Director of the Arizona Department of Health Services for temporary use in support of the State’s COVID-19 response. A licensed Emergency Medical Care Technician is presumed to have acted in good faith in the course of providing emergency care services.

The Executive Order further provides immunity from civil liability for acts or omissions undertaken in good faith by one or more of the agents, officers, employees, representatives, or volunteers of a licensed Arizona healthcare institution, any entity operating a modular field treatment facility, or any other site whether or not it is licensed if it is designated by the Director of the Arizona Department of Health Services for temporary use in support of the State’s COVID-19 response.

Immunity is not provided for gross negligence or reckless or willful misconduct, including but not limited to the healthcare professional, volunteer or other individual rendering medical care services under the influence of alcohol or an intoxicating drug.

The immunities granted for actions or omissions undertaken during the term of the Executive Order survive expiration of the Executive Order.

ARKANSAS

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- [Executive Order 20-18, Executive Order to Amend Executive Order 20-03 regarding the Public Health Emergency Concerning COVID-19 for the Purpose of Equipping Health Care Professionals with the Tools Necessary to Combat the COVID-19 Emergency.](#)

Status: Issued (April 13, 2020).

Person(s) Covered: Physicians; physician assistants; specialist assistants; nurse practitioners; licensed registered nurses; and licensed practical nurses, whether employed by the State or Federal Government, a private entity, or non-profit entity.

Conduct Covered: Liability for any injury or death alleged to have been sustained directly as a result of an act or omissions by a medical professional in the course of providing medical services in support of the COVID-19 outbreak or implementation of measures to control the cause.

Conduct Not Covered: Acting outside the scope of his or her practice unless redeployed as a result of Section 3(d) of the Order; gross negligence; willful misconduct; bad faith.

Effective Date(s): April 13, 2020 and for the duration of the emergency.

Summary: Executive Order 20-18 suspends the definition of “emergency responder” in Ark. Code Ann. § 12-75-103(7)(C) of the Arkansas Emergency Services Act of 1973 to the extent necessary to provide immunity from liability to “emergency responders,” defined in (4) of the Executive Order to include physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses. Immunity from civil liability is provided 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 COVID-19 outbreak or the implementation of necessary measures to control the causes of the COVID-19 epidemic.

Immunity does not extend to an emergency responder who, as a result of his or her act or omissions, caused an injury or death due to acting outside the scope of his or her practice unless redeployed as a result of Section 3(d) of the Executive Order, or acting in gross negligence, willful misconduct, or bad faith.

- [Executive Order 20-34, Executive Order Pursuant to the Public Health Emergency Concerning COVID-19, As Declared in Executive Order 20-03 and Extended by Executive Order 20-25, For the Purpose of Ensuring Access to Healthcare Resources to Treat COVID-19.](#)

Status: Issued (June 15, 2020).

Person(s) Covered: Healthcare providers.

Conduct Covered: Liability for any death, injury or property damage; liability for using any prescription drug or device to treat a known or suspected COVID-19 infection subject to specific requirements.

Conduct Not Covered: Willful, reckless, or intentional misconduct.

Effective Date(s): June 15, 2020.

Summary: The Order provides that pursuant to Ark. Code Ann. § 12-75-103, Healthcare Providers, as defined by the Order, pursuant to Ark. Code Ann. § 12-75-128, are immune from liability for any death, injury or property damage

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alleged to have been sustained as a result of an act or omission by such Healthcare Provider in the course of providing COVID-19 related emergency management functions during the public health emergency. The act or omission must occur as the result of a good faith effort on the part of the Healthcare Provider and was the direct result of the Healthcare Provider's providing a Healthcare Service, as defined by the Order, to a patient for the treatment and mitigation of COVID-19 or the symptoms of COVID-19 during the COVID-19 public health emergency.

Immunity will not extend to an act or omissions that is willful, reckless, or intentional misconduct.

Immunity from liability also extends to Healthcare Providers using any prescription drug or device to treat a known or suspected COVID-19 infection provided that: (i) prescription of the drug or device is within the scope of a Healthcare Provider's license; (ii) the Healthcare Provider prescribes the drug or device in accordance with the most current written recommendations of the U.S. Government agency; and (iii) the Healthcare Provider informs the patient of known positive and negative outcomes of the drug or device and documents the patient's informed consent to the treatment in the patient's medical records.

CALIFORNIA

No Specific COVID-19 Legislation or Order.

COLORADO

No Specific COVID-19 Legislation or Order.

CONNECTICUT

- [Executive Order No. 7V, Protection of Public Health and Safety During COVID-19 Pandemic and Response – Safe Workplaces, Emergency Expansion of the Healthcare Workforce.](#)

Status: Issued (April 7, 2020).

Person(s) Covered: Health care professional; health care facility.

Conduct Covered: Civil liability for death or injury allegedly sustained because of an act or omission undertaken in good faith.

Conduct Not Covered: Acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act pursuant to Section 4-275 et seq. or 31 U.S.C. §3729 et seq.

Effective Date(s): At any time during the public health and civil preparedness emergency declared on March 10, 2020, including any period of extension or renewal, and including acts or omissions occurring prior to the issuance of the Executive Order attributable to COVID-19 response efforts.

Summary: Executive Order No. 7V supersedes Executive Order No. 7U, Section 1 – Protection from Civil Liability for Actions or Omissions in Support of the State's COVID-19 Response and replaces it with a provision providing that any health care professional or health care facility, as defined, shall be immune from suit for civil liability for any injury or

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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. Such acts or omissions include, but are not limited to, 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.

Immunity will not extend to acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act pursuant to Section 4-275 et seq. or 31 U.S.C. §3729 *et seq.*

"Health care facility" as defined by the Executive Order, includes facilities designated by the Commissioner of the Department of Public Health for temporary use for the purposes of providing essential services in support of the State's COVID-19 response. "Health care professional" includes an individual licensed, registered, permitted, or certified in any state in the United States and any retired professional, professional with an inactive license, or volunteer approved by the Commissioner of the Department of Public Health or her designee.

DELAWARE

- [Joint Order of the Department of Health and Social Services and The Delaware Emergency Management Agency.](#)

Status: Issued (March 24, 2020).

Person(s) Covered: Out-of-state health care provider; inactive health care provider; qualified person appointed pursuant to the Order.

Conduct Covered: Civil liability (and indemnification from the State).

Conduct Not Covered: Gross negligence; wanton negligence.

Effective Date(s): March 24, 2020.

Summary: The Joint Order provides that any out-of-state health care provider, inactive health care provider, or qualified person appointed pursuant to the Joint Order is considered a public employee under 10 Del. C. §§ 4001-4002 which provides for immunity from civil suit or proceeding or administrative tribunal, and indemnification from the State, for civil liability alleged against public officers and employees provided that the act or omissions arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlements or privileges or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member has supervisory authority. The act or omissions must have been done in good faith and with the belief that the public interest would best be served by the act or omission.

Immunity does not extend to acts or omissions done with gross or wanton negligence.

DISTRICT OF COLUMBIA

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

- C. Code § 7-2304.01, Issuance of public health emergency executive order.

Status: Re-enacted (March 17, 2020 pursuant to D.C. Act 23-247, § 301(b)).

Person(s) Covered: Licensed health care providers from the District of Columbia or other jurisdictions.

Conduct Covered: Civil liability for damages for any actions taken within the scope of employment or voluntary service.

Conduct Not Covered: Gross negligence.

Effective Date(s): March 17, 2020.

Summary: D.C. Code § 7-2304.01(d)(3) provides that a public health emergency executive order may include terms that exempt licensed health care providers, either from the District of Columbia or from other jurisdictions, for civil liability for damages for any actions taken within the scope of the provider's employment or voluntary service to implement the provisions of the District of Columbia response plan.

Immunity from civil liability will not extend to instances of gross negligence.

- C. Act 23-286, COVID-19 Response Supplemental Temporary Amendment Act of 2020

Status: Enacted (April 10, 2020).

Person(s) Covered: Person(s); employee of the District of Columbia not otherwise exempt under existing law; contractor providing services arising out of a contract with the District of Columbia.

Conduct Covered: Civil liability for damages for actions taken while acting within the scope of their employment or organization's purpose, voluntary service, or scope of work.

Conduct Not Covered: Gross negligence.

Effective Date(s): Authorized to extend the 15-day March 11, 2020 emergency executive order and public health emergency executive order for an additional 90-day period, and to be extended for additional 15-day periods by the Mayor.

Summary: The Act amends The District of Columbia Public Emergency Act of 1980 (D.C. Law 3-149; D.C. Official Code § 7-2301 et seq.) by adding a new paragraph (3A) which would exempt any person, employee of the District of Columbia not otherwise exempt under existing law, or contractor providing services arising out of a contract with the District of Columbia from civil liability for damages for actions taken while acting within the scope of their employment or organization's purpose, voluntary service, or scope of work to implement the provisions of the District of Columbia's response plan. Such immunity is solely for actions taken during the public health emergency.

Immunity from civil liability will not extend in instances of gross negligence.

FLORIDA

No Specific COVID-19 Legislation or Order.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

GEORGIA

- Code § 38-3-35, Immunity from liability of agencies and emergency management workers (Georgia Emergency Management Act of 1981).

Status: Enacted (Current through Laws 2020, Act 322).

Person(s) Covered: State or political subdivision of the state; agents or representatives of the State or any political subdivision thereof; volunteer; auxiliary emergency management workers.

Conduct Covered: Liability for death or injury to person or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith. (Not applicable to state and political subdivision.)

Effective Date(s): 1981.

Summary: Pursuant to Ga. Code § 38-3-35(b), the State, any political subdivision of the State, the employees, agents, or representatives of the State or any political subdivision thereof, volunteer or auxiliary emergency management workers, and members of any agency engaged in any emergency management activity complying with or reasonably attempting to comply with Articles 1 through 3 of the Georgia Emergency Management Act of 1981, or any order, rule, or regulation promulgated pursuant to Articles 1 through 3, or any ordinance relating to precautionary measures enacted by any political provisions of Articles 1 through 3 or political subdivision of the State, are not liable for the death of or the injury to a person or for damage to property as a result of any such activities.

Immunity does not extend to employees, agents, or representatives of the state or any political subdivision thereof, any volunteer or auxiliary emergency management worker or member of any agency engaged in any emergency management activity for death of or the injury to a person or for damage to property where the actions constitute willful misconduct, gross negligence, or bad faith.

- Executive Order 04.14.20.01, Designation of Auxiliary Emergency Management Workers and Emergency Management Activities.

Status: Issued (April 14, 2020).

Person(s) Covered: Healthcare institutions; medical facilities; their employees, staff, and contractors.

Conduct Covered: See Ga. Code § 38-3-35, above.

Conduct Not Covered: See Ga. Code § 38-3-35, above.

Effective Date(s): April 14, 2020 until conclusion of the Public Health State of Emergency Declared in Georgia Executive Order 03.14.20.01 and renewed by Executive Order 04.08.20.02. The Order shall carry forward with the Public Health State of Emergency until such state of emergency is terminated or ceases to be renewed by the Governor.

Summary: Executive Order 04.14.20.01 orders that health care institutions, medical facilities, and their employees,

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

staff, and contractors, as defined in Ga. Code §§ 31-7-1(4)(A), (C)-(G) and 31-7-1(5) are considered “auxiliary emergency management workers” and as conducting “emergency management activities,” as those terms are used in Georgia’s Emergency Management Act of 1981, Ga. Code § 38-3-35, which grants immunity from liability for death of or injury to a person or for damage to property in the absence of willful misconduct, gross negligence, and bad faith in carrying out activities required under Articles 1 through 3 of the Emergency Management Act.

- 2019 S.B. 359, Georgia COVID-19 Pandemic Business Safety Act.

Status: Enacted (August 5, 2020).

Person(s) Covered: Healthcare facility; healthcare provider; entities; individuals.

Conduct Covered: Liability for transmission, infection, exposure, or potential exposure of COVID-19, acts or omissions in arranging or providing healthcare services or medical care to the claimant resulting in injury or death, or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant.

Conduct Not Covered: Gross negligence; willful and wanton misconduct; reckless infliction of harm; or intentional infliction of harm.

Effective Date(s): Upon approval by Governor or upon becoming law without such approval or on August 7, 2020, whichever occurs first, until July 14, 2021 (and not applying to any causes of action accruing thereafter).

Summary: 2019 S.B. 359, Georgia COVID-19 Pandemic Business Safety Act adds a new chapter, Chapter 16, 51-16-1 *et seq.*, which provides, in relevant part, immunity to healthcare facilities, healthcare providers, entities, and individuals for a COVID-19 liability claim, which is defined as (A) transmission, infection, exposure, or potential exposure of COVID-19 to a claimant; (B) acts or omissions in arranging for or providing healthcare services or medical care to the claimant resulting in injury or death of the claimant for COVID-19 or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant; or (C) manufacturing, labeling, donating, or distributing personal protective equipment or sanitizer that is directly related to providing such personal protective equipment or sanitizer to claimant by any entity during a public health state of emergency for COVID-19, which departs from the normal manufacturing, labeling, donating, or distributing personal protective equipment of such entity that proximately results in injury to or death of a claimant. The immunity set forth is provided in addition to, and does not in any way limit, any other immunity protections that may apply under state or federal law.

To the extent that a COVID-19 liability claim arises out of transmission, infection, exposure, or potential exposure of COVID-19 at any healthcare facility or on the premises of any healthcare provider, there is a rebuttable presumption of assumption of the risk when a healthcare facility or a healthcare provider has posted at the point of entry, if present, to the premises, a sign of at least one-inch Arial font placed apart from other text stating a statutorily-prescribed warning as to assumption of risk.

Immunity does not extend where there is proof of gross negligence, willful and wanton misconduct, reckless infliction of harm or intentional infliction of harm.

“Healthcare facility” is defined as having the same meaning as “healthcare facility” as provided for in paragraph (17) of Code Section 31-6-2 and all related parties; as “institution” as provided for in subparagraphs (A) and (C) through (G) of paragraph (4) and paragraph (5) of Code Section 31-7-1 and all related parties; as “end stage renal disease” as

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

provided for in paragraph (6) of Code Section 31-44-1 and all related parties; and shall mean the recipient of a contract as authorized in paragraph (5) of Code Section 37-1-20 and any clinical laboratory certified under the Clinical Laboratory Improvement Amendments in Section 353 of the Public Health Service Act, 42 U.S.C. Section 263a. Such term will not be construed to include premises.

“Healthcare provider” is defined as any physician or other person licensed or otherwise authorized in Georgia to furnish healthcare services, including, but not limited to, any dentist, podiatrist, optometrist, pharmacist, psychologist, clinical social worker, advanced practice registered nurse, registered optician, licensed professional counselor, physical therapist, massage therapist, marriage and family therapist, chiropractor, athletic trainer qualified pursuant to Code Section 43-5-7, occupational therapist, speech-language pathologist, audiologist, dietitian, physician assistant, cardiac technician, emergency medical technician, paramedic, or related parties.

“Medical care” is defined as any act defined as the practice of medicine under Code Section 43-34-21.

HAWAII

- [Executive Order No. 20-05.](#)

Status: Issued (April 16, 2020).

Person(s) Covered: Health care facilities; health care professionals; health care volunteers.

Conduct Covered: Civil liability for any death or injury to persons, or property damage.

Conduct Not Covered: Willful misconduct; gross negligence; recklessness.

Effective Date(s): For the “emergency period” unless terminated by separate proclamation, whichever shall occur first.

Summary: Executive Order 20-05 provides that health care facilities, health care professionals, and health care volunteers, as defined by the Order, are immune from civil liability for any death or injury to persons, or property damage, alleged to have been caused by any act or omission by the health care facility, health care professional, or health care volunteer, which death, injury, or property damage occurred at a time when the health care facility, health care professional, or health care volunteer was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak. Health care facilities, health care professionals, and health care volunteers must in good faith comply completely with all state and federal orders regarding the disaster immunity.

Immunity is inapplicable if it is established that such death, injury, or property damage was caused by willful misconduct, gross negligence, or recklessness.

As defined by the Order, “health care facility” means any program, institution, place, building, or agency or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated or designated to provide medical diagnosis, treatment, nursing, rehabilitative, or preventative care to any person or persons. The term also includes statutorily licensed or certified facilities pursuant to Hawaii Revised Statutes § 321-11(10).

“Health care professional” means physicians and surgeons and others licensed pursuant to chapter 453, podiatrists, dentists, psychologists, nurses, veterinarians, acupuncturists, massage therapists, naturopathic physicians,

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

chiropractors, occupational therapists, physical therapists, respiratory therapists, speech pathologists, audiologists, and pharmacists (licensed pursuant to the Hawaii Revised Statutes), 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 Hawaii Emergency Management Agency (HIEMA) or Hawaii Department of Health (HDOH) pursuant to the Governor's COVID-19 outbreak Emergency Proclamations.

"Health care volunteer" means all volunteers or medical, nursing, social work, occupation, physical or respiratory therapist students who do not have a license 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 HIEMA or HDOH pursuant to the Governor's COVID-19 outbreak Emergency Proclamations.

IDAHO

(1) H.B. 6, Idaho Coronavirus Limited Immunity Act.

Status: Enacted (August 27, 2020). Extended by H.B. 149.

Person(s) Covered: Individuals, corporations, limited liability companies, partnerships, trusts, associations, churches or religious organizations, city, county, school district, college, university or other institutions of higher education, or other unit of local government. Excludes Idaho public health districts, the federal governments, the state (except colleges, universities, and other institutions of higher education), and foreign governments).

Conduct Covered: Civil liability.

Conduct Not Covered: Intentional torts; willful or reckless misconduct.

Effective Date(s): August 27, 2020 until July 1, 2022.

Summary: The Act provides that a person is immune from civil liability for damages or an injury resulting from exposure of an individual to coronavirus. The immunity provided is in addition to any other immunity protection that may apply in state or federal law.

Immunity will not apply to acts or omissions that constitute an intentional tort or willful or reckless misconduct as defined in section 6-1601 of the Idaho Code.

"Person" means any entity recognized in the state and shall include but not be limited to an individual, corporation, limited liability company, partnership, trust, association, church or religious organization, city, county, school district, college, university or other institution of higher education, or other unit of local government. However, "person" shall not include any Idaho public health district; the federal government or any of its agencies; the state of Idaho or any of its agencies, except colleges, universities, and other institutions of higher education; nor any foreign government or foreign jurisdiction.

ILLINOIS

- Executive Order 2020-19, Executive Order in Response to COVID-19 (COVID-19 Executive Order No. 17).

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Issued (April 1, 2020); Subsequently superseded.

Person(s) Covered: Health care facilities; health care professionals; health care volunteers.

Conduct Covered: Civil liability for any injury or death alleged to have been caused by an act or omission, which injury or death occurred at a time when a health care facility was rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.

Conduct Not Covered: Gross negligence; willful misconduct of a health care facility if 20 ILCS 3305/15 is applicable, or by willful misconduct if 20 ILCS 3305/21 is applicable.

Effective Date(s): April 1, 2020 and for the remainder of the duration of the Gubernatorial Disaster Proclamations.

Summary: Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), the Governor direct that during the pendency of the Gubernatorial Disaster Proclamations, Health Care Professionals, Health Care Facilities, and Health Care Volunteers, as defined in the Executive Order, are immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Health Care Professional, Health Care Facility, or Health Care Volunteer, which injury or death occurred at a time when a Health Care Professional, Health Care Facility, or Health Care Volunteer was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.

Immunity is inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

- [Executive Order 2020-37, Executive Order in Response to COVID-19 \(COVID-19 Executive Order No. 35\)](#)

Status: Issued (May 13, 2020).

Person(s) Covered: Hospitals; Health Care Facilities; Health Care Professionals; Health Care Volunteers.

Conduct Covered: Civil liability for any injury or death alleged to have been caused by an act or omission, which injury or death occurred at a time when a Hospital or Health Care Professional was rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.

Conduct Not Covered: Gross negligence; willful misconduct of a health care facility if 20 ILCS 3305/15 is applicable, or by willful misconduct if 20 ILCS 3305/21 is applicable.

Effective Date(s): May 13, 2020 and re-issued in its entirety and extended through June 27, 2020 pursuant to Executive Order 2020-39 (May 29, 2020), but not extended past that date pursuant to Executive Order 2020-44 (June 26, 2020).

Summary: Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), the Governor has directed that during the pendency of the Gubernatorial Disaster Proclamations, Hospitals that continue to cancel or postpone all elective surgeries or procedures in order to respond to the COVID-19 outbreak, or Health Care Professionals providing service in such a Hospital, and Health Care Facilities or Health Care Professionals providing services in a Health Care Facility, as defined by the Executive Order, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Hospital or Health Care Professional, or relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by an act or omission by the Health Care Facility

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

or the Health Care Professional, which injury or death occurred at a time when a Hospital or Health Care Professional or Health Care Facility or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH.

These sections of the Executive Order are inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct of such Hospital or Health Care Professional, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

Health Care Volunteers, as defined by the Executive Order, are also immune from civil liability for any injury or death alleged to have been caused by any act or omission of the Health Care Volunteer, which injury or death occurred at a time when the Health Care Volunteer was rendering assistance to the State in response to the COVID-19 outbreak by providing services, assistance, or support consistent with current guidance issued by IDPH.

This section of the Executive Order is inapplicable if it is established that such injury or death was caused by willful misconduct.

Pursuant to Executive Order 2020-39, dated May 29, 2020, Executive Order 2020-37 supersedes Executive Order 2020-19 as of its effective date, May 13, 2020.

INDIANA

- [Indiana Code 34-30-13.5, Health Care: Immunity for Persons Providing Services in a Disaster.](#)

Status: Enacted (effective through June 30, 2020).

Person(s) Covered: Licensed health care services providers under Indiana law or the law of another state; facilities; other locations providing health care services.

Conduct Covered: Civil liability for acts or omissions.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): 2006.

Summary: Pursuant to Indiana Code 34-30-13.5-1, a person who has a license to provide health care services under Indiana law or the law of another state and who provides a health care service (A) within the scope of the person's license to another person; and (B) at a location where health care services are provided during an event that is declared as a disaster, will be immune from civil liability for an act or omission relating to the provision of health care services in response to an event declared as a disaster emergency under IC 10-14-3-12. The immunity extends regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency.

Pursuant to Indiana Code 34-30-13.5-3, a facility or other location that is providing health care services in response to an event declared as a disaster emergency will not be held liable for an act or omission relating to the provision of health care services if the person meets the qualifications of 34-30-13.5-1, and is acting during an event that is declared as a disaster emergency, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Civil immunity is not extended, pursuant to Indiana Code 34-30-13.5-2, to damages resulting from the act or omission relating to the provision of health care services resulting from the person's gross negligence or willful misconduct.

- 2021 Indiana House Bill No. 1002, Civil immunity related to COVID-19.

Status: Referred to Committee on Judiciary (January 4, 2021).

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability for an act or omission relating to the provision of health care services.

Conduct Not Covered: Gross negligence or willful misconduct.

Effective Date(s): Effective as of passage, with varying enumerated effective dates.

Summary: The act would amend Section 8. IC 34-30-13.5-1 to include a Section 1(a) that provides that, accept as provided in Section 2, a person who has a license to provide health care services under Indiana law or the law of another states, who provides health care services with the scope of the person's license and at a location where health care services are provide during an event that is declared as a disaster may not be held civilly liable for an act or omission relating to the provision of health care services in response to an event that is declared a disaster under IC 10-14-3-12, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency. That such Section 1(a) applies before March 1, 2020, and after March 31, 2022.

Section 1(b) applies after February 29, 2020 and before April 1, 2022, and provides that except as provided in Section 2, a person providing health care services, whether in person or through telemedicine services permitted by IC 25-1-9.5, at a facility or other location where health care services are provided in response to or during a state disaster emergency declared under IC 10-14-3-12, regardless of whether the provision of health care services occurs before or after the declaration of a state or emergency may not be held civilly liable for an act or omission relating to the provision of health care services.

Section 2., IC 34-30-13.5-2 provides that a person is not immune from civil liability if the damages resulting from the act or omission relating to the provision of the health care services resulted from the person's gross negligence or willful misconduct.

- Guidance Concerning Liability for Healthcare Providers and Facilities, Indiana State Department of Health.

Status: Issued (April 3, 2020)

Person(s) Covered: N/A

Conduct Covered: N/A

Conduct Not Covered: N/A

Effective Date(s): N/A

Summary: The Indiana State Department of Health issued guidance on Indiana Code 34-30-13.5 in the wake of the COVID-19 pandemic to confirm that facilities and individuals providing healthcare services in response to a declared

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

disaster emergency, such as the one declared because of COVID-19, may not be held liable for care provided in response to that emergency event unless the care resulted from gross negligence or willful misconduct, stating that 34-30-13.55 sets forth the details of the immunity provided.

The guidance further confirms that liability protections from healthcare providers under Indiana Code 35-30-13.5 does not depend on employment status, meaning whether a provider is an employee or a volunteer, and that providers that did not hold licenses prior to the outbreak, but are providing healthcare services in accordance with the requirements of Indiana Executive Order 20-13, including registration with the Indiana Professional Licensing Agency, are licensed for purposes of the liability protections.

The guidance also confirms that the Indiana Code section granting immunity to facilities does not list specific facility types, but that the immunity applies to any facility that provides health care services by a professional licensed under Indiana state law or the law of another state and the provision of care is in response to and during the COVID-19 emergency declaration. "Locations" in that section would extend to non-facility locations that may be set-up in response to the COVID-19 emergency.

The guidance also confirms that the federal government has provided immunity to volunteer healthcare providers in the CARES Act.

- [Senate Bill No. 1](#)

Status: Enacted (February 18, 2021)

Person(s) Covered: Individual, business, state or local government entity, health care provider, or nursing home in Exposure Claims; manufacturer or supplier in Products Liability Claims

Conduct Covered: Civil tort liability

Conduct Not Covered: Gross negligence or willful or wanton misconduct (including fraud and intentionally tortious acts)

Effective Date(s): Retroactively March 1, 2020 until December 31, 2024.

Summary: Provides civil tort immunity for damages arising from Covid-19 on the premises owned or operated by a person, on any premises on which the person or an employee or agent of the person provided property or services to the individual, or during an activity managed, organized, or sponsored by the person. Conduct that constitutes gross negligence, or willful or wanton misconduct (including fraud and intentionally tortious acts), are exempt from immunity.

The bill also provides civil tort immunity against products liability claims that allege harm from the design, manufacture, labeling, sale, distribution, or donation of a Covid-19 protective product. "Protective product" includes personal protective equipment, medical devices, equipment or supplies that are used to treat Covid-19, medications used to treat Covid-19, tests approved by the FDA to diagnose or determine exposure or immunity to Covid-19, any product designed clean or disinfect or prevent the spread of the virus, or any component of any item defined as protective product. Conduct that constitutes gross negligence, or willful or wanton misconduct (including fraud and intentionally tortious acts), are exempt from immunity.

The bill further prohibits class action suits arising from Covid-19 or Covid-19 protective products.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

IOWA

- Iowa Code § 135.147, Immunity for emergency aid – exceptions.

Status: Enacted.

Person(s) Covered: Person; corporation; other legal entity; employee or agent or such person, corporation, or entity.

Conduct Covered: Civil liability for causing the death of or injury to a person, or for damage to property.

Conduct Not Covered: Acts or omissions constituting recklessness; an act or omission caused in whole or in part the public health disaster.

Effective Date(s): May 11, 2007.

Summary: Section 135.147 provides that a person, corporation, or other legal entity, or any employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of the public health disaster will not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.

Immunity does not apply to any person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, whose act or omission caused in whole or in part the public health disaster and who would not otherwise be liable therefor.

- PPE Shortage Order, Iowa Department of Public Health.

Status: Issued (April 9, 2020)

Person(s) Covered: A health care provider, hospital, health care facility, and any other person, corporation, or other legal entity or employee of all such entities acting in compliance with the

Order. or other guidance issued by the Iowa Department of Public Health or the Centers

for Disease Control and Prevention related to optimizing PPE supply.

Conduct Covered: See Iowa Code § 135.147.

Conduct Not Covered: See Iowa Code § 135.147.

Effective Date(s): April 9, 2020 and shall continue so long as the state of public health disaster emergency remains in effect unless sooner terminated or modified by subsequent order of the Department or proclamation of the Governor.

Summary: The PPE Shortage Order notes that Iowa Code § 135.147 provides legal immunity for health care providers during a public health disaster. Specifically, § 135.147 provides immunity for persons, corporations, and other legal entities who provide medical care, in good faith, to victims of a public health disaster. The Order provides that immunity covers civil damages resulting from death, injury, or property damage. Health care providers only qualify for this

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

immunity if acting under the direction of the IDPH during a public health disaster.

The PPE Shortage Order states that any health care provider acting in compliance with the Order, or other guidance issued by the IDPH or the Centers for Disease Control and Prevention related to PPE supply measures, is acting under the direction of the IDPH during a public health disaster and therefore will be entitled to the immunity protections of § 135.147.

(3) Senate File 2338, COVID-19-Related Liability

Status: Enacted (June 18, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Civil damages.

Conduct Not Covered: Recklessness or willful misconduct.

Effective Date(s): Retroactive application to January 1, 2020.

Summary: The amendment creates a new section of the Iowa Code 686D.1, *et seq.*, which includes civil immunity for health care providers (including professional, health care facilities, home health care facilities, or any other person or facility authorized to administer health care) for causing or contributing, directly or indirectly, to the death or injury of an individual resulting from the provider's acts or omissions in support of the state's response to COVID-19. The civil immunity applies to an injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with COVID-19; prescribing, administering, or dispensing pharmaceuticals for off-label use to treat a patient with COVID-19; or acts or omissions while providing health care to individuals unrelated to COVID-19 when care is affected by COVID-19, identifying examples.

Civil immunity does not apply to reckless or willful misconduct.

A claim for COVID-19 exposure may not be filed unless it alleges a minimum medical condition – a diagnosis of COVID-19 that requires inpatient hospitalization or results in death – unless the act was intended to cause harm or constitutes actual malice.

KANSAS

- House Bill 2016, COVID-19 Response and Reopening for Business Liability Protection Act.

Status: Enacted (June 9, 2020).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services.

Conduct Not Covered: Gross negligence; willful, wanton or reckless conduct; healthcare services not related to COVID-19.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Effective Date(s): Effective after publication in the Kansas register, and pursuant to Section 15(b), apply retroactively to any cause of action accruing on or after March 12, 2020 and prior to the termination of the state of disaster emergency related to the COVID-19 public health emergency declared pursuant to K.S.A. 48-924 and amendments thereto.

Summary: Section 10 of the Act provides that a healthcare provider is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decision or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any state of disaster emergency declared pursuant to K.S.A. 48-924, and amendments, related to the COVID-19 public health emergency. The provisions apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any state of disaster emergency declared pursuant to K.S.A. 48-924, and amendments, related to the COVID-19 public health emergency.

Immunity does not apply to civil liability when it is established that the act, omissions or healthcare decision constituted gross negligence or willful, wanton or reckless conduct.

Section 10 does not apply to healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.

“Healthcare provider” means any person licensed or otherwise authorized by law to provide healthcare services in the state or a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by law to form such corporation who are health care providers as defined by the subsection, or an officer, employee or agent thereof, acting in the course and scope of employment or agency.

KENTUCKY

- [2020 K.Y. S.B. No. 150, An Act relating to the state of emergency in response to COVID-19 and declaring an emergency.](#)

Status: Enacted (March 30, 2020).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for ordinary negligence if exercising ordinary, reasonable, and prudent health care in good faith.

Conduct Not Covered: Anything other than ordinary negligence.

Effective Date(s): Until January 1, 2021.

Summary: During the state of emergency declared by the Governor in response to COVID-19 on March 6, 2020, by Executive Order 2020-215, a health care provider who in good faith renders care or treatment of a COVID-19 patient during the state of emergency has a civil liability defense for ordinary negligence for personal injury resulting from the care or treatment, or from any act in providing or arranging further medical treatment. The health care provider must act as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances.

The defense includes a health care provider who (1) prescribes or dispenses medicines for off-label use to attempt to

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combat the COVID-19 virus; (2) provides health care services, upon the request of health care facilities or public health entities, that are outside the provider's professional scope of practice; or (3) utilize equipment or supplies outside of the product's normal use for medical practice and the provision of health care services.

(2) [2020 K.Y. S.B. 5](#)

Status: Enacted (April 11, 2021).

Person(s) Covered: Premises owners or possessors, Essential service providers

Conduct Covered: Civil liability for ordinary negligence if exercising ordinary, reasonable, and prudent health care in good faith.

Conduct Not Covered: Gross negligence, or wanton, willful, malicious, or intentional misconduct

Effective Date(s): Retroactively March 6, 2020

Summary: The act extends immunity against premises liability claims where a premises owner or possessor follows any executive action to prevent the spread of COVID-19 during the declared emergency and either directly or indirectly invites or permits another person to enter the premises is not liable for corona virus related injuries suffered by business invitees during the period of the state health emergency. The bill defines premises owners as restaurants, retail shops, schools, churches, stadiums, gyms, medical facilities and long-term care facilities, among other entities. An "executive action" includes all orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency, or a local governmental agency; and Industry-specific guidelines related to a COVID-19 declared emergency. The act does not create a duty of care, relieve any person entering a premise from any obligation he or she may have to exercise care, or affect any right to workers' compensation benefits or the exclusivity of the workers' compensation law.

Additionally, the act provides immunity to essential service providers against "any claim or cause of action for an act or omission arising from COVID-19" during the declared emergency. Essential service providers include organizations that provide charitable and social services; individuals and businesses needed for transportation; financial institutions; mail, post, shipping, and pick-up services; individuals and businesses that produce, supply, prepare, and sell food; home-based care and services; individuals and businesses that work in the supply chain for critical medical and pharmaceutical products; Health care providers; Medicaid waiver providers; elementary and secondary schools, whether public or private; child care service providers and facilities; funeral directors, morticians, undertakers, and embalmers; local government agencies and political subdivisions; and manufacturers that produced or are producing, or that distributed or are distributing, medical, medicinal, hygienic items such as face masks and hand sanitizers, or other personal protective equipment.

The act also sets a one-year statute of limitations for any Covid-19 claim for personal injury against a premises owner/possessor or essential service provider and extends liability protection from negligence claims available to those who repurpose property for use in sheltering people during an emergency to apply regardless of whether the person provides the property "voluntarily and without compensation."

LOUISIANA

- [LSA-R.S. 29:771\(B\)\(2\)\(c\), Miscellaneous \(Louisiana Health Emergency Powers Act\)](#).

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Enacted (Current through 2019 Regular Session).

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability for causing the death of, or injury to, any person.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): Current through 2019 Regular Session.

Summary: LSA-R.S. 29:771(B)(2)(c) orders that during a state of public health emergency, any health care provider^[2] is not civilly liable for causing the death of, or injury to, any person or damage to any property.

Civil immunity does not extend to gross negligence or willful misconduct.

- LSA-R.S. 37:1731.1, Medical services during declared state of emergency; limitation of liability (Good Samaritan Law).

Status: Enacted (June 30, 2008; Current through 2019 Regular Session).

Person(s) Covered: Medical personnel.

Conduct Covered: Civil damages or injury as a result of any act or omission related to the rendering of or failure to render services.

Conduct Not Covered: Gross negligence; willful and wanton misconduct.

Effective Date(s): Precipitating event requiring a declared state of emergency through the period of time set forth in the declaration of a state of emergency.

Summary: LSA-R.S. 37:173.1 provides that medical personnel who in good faith, and regardless of compensation, render or fail to render emergency care, health care services or first aid during a declared state of emergency (when the state of emergency affects the rendering of medical care), will not be liable for any civil damages or injury as a result of any act or omission related to the rendering or failure to render services.

Civil immunity does not extend to damages or injury caused by gross negligence or willful and wanton misconduct.

The definition of “declared state of emergency,” provides that the statutory provision is effective during the period of time set forth in the Governor’s declaration and shall also be retroactive to the precipitating event requiring the declaration.

- Senate Bill No. 445, LIABILITY: Provides relative to limitation of civil liability for medical personnel and healthcare providers during public health emergency.

Status: Referred to Committee on Judiciary A. (May 4, 2020)

Person(s) Covered: See R.S. 29:771(B)(2)(c) and R.S. 37:1731.1, above.

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Conduct Covered: See R.S. 29:771(B)(2)(c) and R.S. 37:1731.1, above.

Conduct Not Covered: See R.S. 29:771(B)(2)(c) and R.S. 37:1731.1, above.

Effective Date(s): March 11, 2020 (retroactive).

Summary: An Act to amend and reenact R.S. 29:771(B)(2)(c) and (d) and R.S. 37:1731.1, relative to immunity from civil liability, to provide relative to certain immunity from civil liability for medical personnel and healthcare providers during public health disasters or emergencies, and to provide definitions, terms, conditions, and requirements, and to provide for related matters.

The proposed law revises when the present law is applicable and revises the definition of “during a declared state of emergency” to include R.S. 29:760 et seq. The proposed law further provides that due to the imminent threat posed by COVID-19, as provided in Proclamation Number 25 JBE 2020 and any subsequent proclamation declaring the existence of a statewide public health emergency, that the proposed law shall be retroactive to March 11, 2020.

- House Bill No. 778, EMERGENCY PREPAREDNESS: Provides for the limitation of liability during a declaration of a state of public health emergency

Status: Introduced into the House (Mar. 31, 2020).

Person(s) Covered: See R.S. 29:771(B)(2)(c).

Conduct Covered: See R.S. 29:771(B)(2)(c).

Conduct Not Covered: See R.S. 29:771(B)(2)(c).

Effective Date(s): During the state of public health emergency (and effective upon signature of governor or lapse of time for gubernatorial action).

Summary: An Act to amend and reenact R.S. 29:771(B)(2)(c) and (d), relative to the Louisiana Health Emergency Powers Act, to provide for a limitation on liability during a state of public health emergency, to provide for the liability of healthcare providers, to provide for the liability of private entities, and to provide for related matters.

The proposed law makes it effective only during a state of public health emergency declared, as provided in the present law.

MAINE

No Specific COVID-19 Legislation or Order.

MARYLAND

- MD Public Safety Code § 14-3A-06, Immunity.

Status: Enacted (2014).

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Person(s) Covered: Health care provider.

Conduct Covered: Civil or criminal liability.

Conduct Not Covered: Other than good faith.

Effective Date(s): N/A

Summary: Health care providers are considered immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation.

- Renewal of Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19.

Status: Issued (May 6, 2020).

Person(s) Covered: N/A

Conduct Covered: N/A

Conduct Not Covered: N/A

Effective Date(s): May 6, 2020

Summary: The Governor's proclamation provides in Section II. that health care providers who act in good faith under the declared catastrophic health emergency proclamation, including orders issued under the proclamation by the Governor and by other State officials acting at the direction of or under delegated authority from the Governor, have the immunity provided by § 14-3A-06 of the Public Safety Article of the Maryland Code.

MASSACHUSETTS

- Senate Bill 2640. An Act to provide liability protections for health care workers and facilities during the COVID-19 pandemic.

Status: Enacted (Apr. 17, 2020).

Person(s) Covered: Health care professionals; health care facilities; volunteer organizations.

Conduct Covered: Suit and civil liability for damages alleged to have been sustained by an act or omission in the arranging for or providing of health care services in good faith; Suit and civil liability for any damages occurring in or at the volunteer organization's facility.

Conduct Not Covered: Act or omission constituting gross negligence, recklessness, or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity in the providing of health care services; consumer protection actions brought by the Attorney General; false claims actions brought by or on behalf of the Commonwealth.

Effective Date(s): March 10, 2020 (declaration of COVID-19 emergency) and until terminated or rescinded.

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Summary: The Act provides that health care professionals and health care facilities, as defined by the Act, are immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency, provided that they are (1) arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law; (2) arranging for or providing care or treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak or COVID-19 emergency rules; and (3) the health care facility or health care professional is arranging for or providing health care services in good faith.

Immunity is inapplicable if the damage was caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by a health care facility or health care professional providing health care services, and shall not apply to consumer protection actions brought by the Attorney General, or to false claims actions brought by or on behalf of the Commonwealth.

The Act further provides that a volunteer organization, as defined by the Act, will also be immune from suit and civil liability for any damages occurring in or at the volunteer organization's facility where the damage arises from the use of the facility for the Commonwealth's response and activities related to the COVID-19 emergency. Immunity is inapplicable if it is established that the damages were caused by the volunteer organization's gross negligence, recklessness or conduct with an intent to harm.

MICHIGAN

- C.L.A. 30.411, Personnel of disaster relief forces, powers, duties, rights, privileges and immunities and compensation (Michigan Emergency Management Act).

Status: Enacted (Current through P.A. 2020, No. 84, of the 2020 Regular Session, 100th Legislature).

Person(s) Covered: A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital, whether licensed in Michigan or another state or by the federal government or a branch of the armed forces of the United States; a registered nurse, practical nurse, nursing student acting under the supervision of a licensed nurse, a dentist, a veterinarian, a pharmacist, a pharmacist intern acting under the supervision of a licensed pharmacist, and a paramedic, if licensed in Michigan or another state or by the federal government or a branch of the armed forces of the United States; a medical resident undergoing training in a licensed hospital in Michigan or another state.

Conduct Covered: Liability for injury sustained in the rendering of services during a state of disaster declared by the governor, regardless of how or under what circumstances or by what cause those injuries are sustained.

Conduct Not Covered: An act or omission that is willful or gross negligence, as defined in the Act.

Effective Date(s): N/A

Summary: M.C.L.A. 30.411(4) provides that a person that is licensed to practice medicine or osteopathic medicine and surgery, or a licensed hospital, whether licensed in Michigan or in another state, or by the federal government or a branch of the armed forces of the United States, who renders services during a state of disaster declared by the governor, and at the express or implied consent of a governmental official, is considered an authorized disaster relief worker or facility, and is not liable for an injury sustained by a person by reason of those services, regardless of how,

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under what circumstances, or by what cause those injuries are sustained. The same immunity extends to the following individuals: a registered nurse; a practical nurse; a nursing student acting under the supervision of a licensed nurse; a dentist; a veterinarian; a pharmacist; a pharmacist intern acting under the supervision of a licensed pharmacist; a paramedic; and a medical resident undergoing training in a licensed hospital in Michigan or another state.

Immunity is inapplicable in the event of an act or omission that is willful or gross negligence. Gross negligence is defined within the subsection (9) to mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. If a civil action for malpractice is filed alleging an act or omission that is willful or gross negligence resulting in injuries, the services rendered are to be judged according to the standards required of persons licensed in the State.

- Executive Order No. 2020-30, Temporary relief from certain restrictions and requirements governing the provision of medical services; Executive Order No. 2020-61, Temporary relief from certain restrictions and requirements governing the provision of medical services.

NOTE: Executive Orders 2020-30 and 2020-61 were deemed unconstitutional by a series of decisions issued by the Michigan Supreme Court on October 2, 2020 pursuant to *In re Certified Questions From United States Dist. Court, W. Dist. of Michigan, S. Div., No. 161492, 2020 WL 5877599* (Mich. Oct. 2, 2020), and on October 12, 2020 pursuant to *House of Representatives v. Governor, 949 N.W.2d 276* (Mich. 2020) and *In re Certified Questions from United States Dist. Court, W. Dist. of Michigan, S. Div., 949 N.W.2d 274* (Mich. 2020).

Status: Issued (March 30, 2020).

Person(s) Covered: Licensed health care professional or designated health care facility providing medical services in support of the state's response to the COVID-19 pandemic.

Conduct Covered: Liability for an injury sustained.

Conduct Not Covered: Gross negligence.

Effective Date(s): March 30, 2020 and superseded on April 26, 2020 by Executive Order 2020-61, Temporary relief from certain restrictions and requirements governing the provision of medical services. Executive Order 2020-100 (May 22, 2020) extends Executive Order 2020-61 and provides that it would remain in effect until the end of the state of emergency declared in Executive Order 2020-99, or at the end of any subsequently declared state of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later. Executive Order 2020-150 (July 13, 2020) rescinded the liability protections, noting that as pressure on hospitals has eased, so too as the need for the broad relief afforded in Executive Orders 2020-30 and 2020-61.

Summary: Under Executive Order 2020-30, the Governor of Michigan provided that consistent with MCL 30.411(4), any licensed health care professional or designated health care facility that provides medical services in support of the 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, under what circumstances, or by what cause those injuries are sustained.

Immunity from liability is inapplicable where it is established that injury or death was caused by the gross negligence, as defined in MCL 30.411(9), of the health care professional or designated health care facility.

- Executive Order No. 2020-39, Temporary relief from certain restrictions and requirements governing the provision of emergency medical services

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NOTE: Executive Order 2020-39 was deemed unconstitutional by a series of decisions issued by the Michigan Supreme Court on October 2, 2020 pursuant to *In re Certified Questions From United States Dist. Court , W. Dist. of Michigan, S. Div.*, No. 161492, 2020 WL 5877599 (Mich. Oct. 2, 2020), and on October 12, 2020 pursuant to *House of Representatives v. Governor*, 949 N.W.2d 276 (Mich. 2020) and *In re Certified Questions from United States Dist. Court , W. Dist. of Michigan, S. Div.*, 949 N.W.2d 274 (Mich. 2020).

Status: Issued (Apr. 8, 2020).

Person(s) Covered: Emergency medical services personnel or life support agency.

Conduct Covered: Liability for an injury sustained

Conduct Not Covered: Gross negligence.

Effective Date(s): April 8, 2020 and rescinded on June 3, 2020 pursuant to Executive Order 2020-112, Rescission of certain executive orders.

Summary: Under Executive Order 2020-39, the Governor of Michigan provided that consistent with section 11(4) of the Emergency Management Act, 1976 PA 390, as amended MCL 30.411(4), an emergency medical services personnel or life support agency that provides medical services in support of the 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.

Immunity from liability is inapplicable where it is established that injury or death was caused by the gross negligence, as defined in MCL 30.411(9) of the emergency medical services personnel or life support agency.

- [Public Act 236 of 2020, Michigan House Bill 6030, COVID-19 response and reopening liability assurance act.](#)

Status: Enacted (October 22, 2020).

Person(s) Covered: Persons, as defined by the Act.

Conduct Covered: Acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk.

Conduct Not Covered: N/A

Effective Date(s): Retroactive to March 1, 2020.

Summary: The Act provides that a person is immune from a COVID-19 claim liability related to exposure or potential exposure to COVID-19 when a person acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm.

A COVID-19 claim includes conduct intended to reduce transmission of COVID-19, such as tort claims based on testing or contract tracing, for example.

A de minimis deviation from strict compliance unrelated to the plaintiff's injuries does not deny the person the immunity.

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The Act does not (a) create, recognize, or ratify a claim or cause of action of any kind; (b) eliminate a required element of any claim, including, but not limited to, causation and proximate cause elements; (c) affect rights, remedies, or protections under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, including the exclusive application of that act; (d) amend, repeal, alter, or affect any other immunity or limitation of liability; (e) create a defense to liability in an administrative proceeding or civil action brought by a state or local government prosecutor or agency to endorse state statutes and regulations, executive orders, or state agency orders, applicable to COVID-19.

"Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity, including but not limited to, a school, a college or university, an institution of higher education, and a nonprofit charitable organization. Person includes an employee, agent, or independent contractor of the person, regardless of whether the individual is paid or an unpaid volunteer.

- [Public Act 240 of 2020, Michigan House Bill 6159, Pandemic Health Care Immunity Act](#)

Status: Enacted (October 22, 2020).

Person(s) Covered: Persons, as defined by the Act.

Conduct Covered: Injury, including death, sustained by an individual by reason of those services.

Conduct Not Covered: Willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm.

Effective Date(s): Retroactive to March 29, 2020 and before July 14, 2020.

Summary: Health care providers and health care facilities that provide health care services in support of Michigan's response to the COVID-19 pandemic are not liable for any injury, including death, sustained by an individual by reason of those services, regardless of how or under what circumstances, or by what cause, those injuries are sustained.

Immunity does not extend to the provision of services constituting willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm.

- [Senate Bill No. 899, A bill to amend 1976 PA 390, entitled "Emergency management act," by amending section 11 \(MCL 30.411\), as amended by 2005 PA 321.](#)

Status: Referred to Committee on Judiciary (May 7, 2020)

Person(s) Covered: A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital; health care professional; health care facility; registered nurse; practical nurse; nursing student acting under the supervision of a licensed nurse; dentist; veterinarian; pharmacist; pharmacist intern acting under the supervision of a licensed pharmacist; paramedic; medical resident undergoing training in a licensed hospital in this or another state; other licensed, registered or unlicensed health care professionals, or other health care providers, including their employers; contractors; health care facility administrators; executives; supervisors; board members, trustees, volunteers; students; trainees; or other comparable individuals or agents of health care facilities; and other individuals otherwise authorized by executive order or law of this state to provide health care services, with or without a license, during a state of emergency or a state of disaster.

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Conduct Covered: Civil or criminal liability.

Conduct Not Covered: Willful or gross negligence; willful or intentional criminal misconduct; or intentional infliction of harm by the health care facility, health care professional, or other health care provider arranging for, providing, or making decisions regarding health care services.

Effective Date(s): Retroactive to March 10, 2020 and remains in effect for the duration of the COVID-19 state of emergency or state of disaster or through September 30, 2020, whichever is later.

Summary: The bill revises the state's emergency management act. A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital, health care professional or a health care facility, whether licensed in this or another state or by the federal government or a branch of the armed forces Armed Forces of the United States, or an individual listed described in subsection (6) (registered nurse; practical nurse; nursing student acting under the supervision of a licensed nurse; dentist; veterinarian; pharmacist; pharmacist intern acting under the supervision of a licensed pharmacist; paramedic; medical resident undergoing training in a licensed hospital in this or another state; other licensed, registered or unlicensed health care professionals, or other health care providers, including their employers; contractors; health care facility administrators; executives; supervisors; board members, trustees, volunteers; students; trainees; or other comparable individuals or agents of health care facilities; and other individuals otherwise authorized by executive order or law of this state to provide health care services, with or without a license, during a state of emergency or a state of disaster), who renders health care services during a state of disaster declared by the governor and at the express or implied request of a state official or agency or county or local coordinator or executive body, under this act or under a state of emergency declared under 1945 PA 302, MCL 10.31 to 10.33, in support of this state's response to the state of disaster declared under the act or under a state of emergency declared under 1945 PA 302, MCL 10.31 to 10.33, is considered an authorized disaster relief worker or facility and is not liable, for an injury sustained by a person by reason of those services, civilly or criminally, for any harm or damages sustained or alleged to have been sustained as a result of any act or omission occurring in the course of arranging for, providing, or making decisions regarding health care services regardless of how or under what circumstances or by what cause those injuries are sustained. The immunity granted under this section extends to a health care professional's or health care facility's reliance on a patient's advanced directive witnessed by health care facility employees, provided that those employees were not directly involved in the patient's care prior to witnessing the patient's advanced directive.

Immunity does not apply in the event of an act or omission that is willful or gross negligence, constitutes willful or intentional criminal misconduct, or constitutes intentional infliction of harm by the health care facility, health care professional, or other health care provider arranging for, providing, or making decisions regarding health care services.

Acts, omissions, or decisions impacting any patient, employee, agent, family member, volunteer, visitor, business partner, or other individual resulting in whole or in part from a storage of personal protective equipment, resources, medical equipment, or staffing is not considered to be willful or gross negligence, willful or intentional criminal misconduct, or an intentional infliction of harm.

"Health care facility" means (i) a health facility or agency described by statute; (ii) state-owned surgical centers; (iii) state-operated outpatient facilities; (iv) state-operated veterans facilities; (v) facilities used as surge capacity for any of the health care facilities described in this subdivision.

"Health care professional" means an individual who is otherwise authorized to provide health care services during a state of emergency or state of disaster.

"Health care provider" means an individual who is otherwise authorized to provide health care services during a state of

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emergency or state of disaster.

“Health care services” mean services provided by a health care facility, health care professional, or other health care provider regardless of the location where those services are provided, including the provision of health care services via telehealth or other remote method.

MINNESOTA

No Specific COVID-19 Legislation or Order.

MISSISSIPPI

- Executive Order No. 1471.

Status: Issued (April 10, 2020).

Person(s) Covered: Healthcare professional; healthcare facility.

Conduct Covered: Suit for civil liability for any injury or death alleged to have been sustained because of acts or omissions while providing health care services.

Conduct Not Covered: Acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct, or would otherwise constitute a false claim under federal law.

Effective Date(s): April 10, 2020 and extended pursuant to Executive Order 1497, dated June 12, 2020, until 11:59 p.m. on July 1, 2020, unless it is modified, amended, or superseded.

Summary: The Executive Order, pursuant to the Mississippi Emergency Management Act, provides that any Healthcare Professional or Healthcare Facility, as defined in the Executive Order, is immune from suit for civil liability for any injury or death alleged to have been sustained because of the Healthcare Professional or Facility’s acts or omissions while providing healthcare services, including but not limited to screening, assessing, diagnosing, and treating patients for COVID-19, or otherwise acting in support of the State’s COVID-19 response. Acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic that render the Healthcare Professional or Facility unable to provide the level or manner of care that would otherwise be required are included in the immunity.

Immunity does not extend to acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct, or would otherwise constitute a false claim pursuant to 31 U.S.C. §3729 *et seq.*

“Healthcare Facility” includes hospitals, clinics, nursing homes, mental health centers, and field hospitals, and any other facilities designated for temporary use for the purpose of providing healthcare services in support of the State’s COVID-19 response. “Healthcare Professional” includes any individual licensed, registered, permitted, or certified in any state, whether paid or unpaid, who is providing health care services in response to the COVID-19 outbreak at a Healthcare Facility, or working for the State in response to its 2020 Disaster Proclamation.

(2) S.B. 3049, Mississippi Back-to-Business Liability Assurance Act and Healthcare Emergency Response Liability Protection Act.

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Status: Enacted (July 8, 2020).

Person(s) Covered: Healthcare professional; healthcare facility.

Conduct Covered: Civil liability.

Conduct Not Covered: Clear and convincing evidence of actual malice or willful, intentional misconduct.

Effective Date(s): Applies retroactively to March 14, 2020, during the state of emergency, during any period of renewal or extension, and terminates one year after the end of the COVID-19 state of emergency.

Summary: The Act provides, in relevant part, that health care professionals and facilities are immune from any lawsuit alleging an injury or death directly or indirectly sustained because of acts or omissions when providing health care services related to a COVID-19 state of emergency. The provision includes a nonexclusive list of a broad range of health care services that support that state's response to the COVID-19 state of emergency covered by the immunity, including delaying or cancelling non-urgent or elective surgical procedures or using equipment or supplies outside of their normal use.

Immunity does not apply where a plaintiff shows, by clear and convincing evidence, that a defendant acted with actual malice or willful, intentional misconduct.

A person bringing a claim alleging injury arising from COVID-19 within two years of accrual. The statute of limitations does not apply to claims against a government entity, which are governed by the Mississippi Tort Claims Act. Any civil liability arising out of acts or omissions that occurred during the operation of the act are subject to its provisions in perpetuity.

MISSOURI

(1) [2021 Missouri Senate Bill No. 51.](#)

Status: Introduced (January 6, 2021).

Person(s) Covered: Health care providers.

Conduct Covered: Civil medical liability actions.

Conduct Not Covered: Gross negligence or willful misconduct, and that the alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged gross negligence or willful misconduct, by clear and convincing evidence.

Effective Date(s): [As of passage of the Act.](#)

Summary: The act seeks to amend chapter 537, RSMo, by adding nine new sections relating to civil actions, with an emergency clause. A newly enacted 537.1010, RSMo provides that no health care provider will be liable in a COVID-19 medical liability action unless the plaintiff can prove by clear and convincing evidence: (1) gross negligence or willful misconduct by the health care provider; and (2) that the alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged gross negligence or willful misconduct.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Acts, omissions, or decisions resulting from a resource or staffing shortage will not be considered gross negligence or willful misconduct.

A COVID-19 medical liability action is defined as a civil action brought by a person who suffered personal injury, or a representative of a person who suffered personal injury; brought against a health care provider; and alleging any harm, damage, breach, or tort resulting in the personal injury alleged to have been caused by, arising out of, or related to a health care provider's act or omission in the course of arranging for or providing COVID-19 related health care services that occurred on or after December 1, 2019 and before the later of October 1, 2024 or the date on which there is no state of emergency declared by proclamation of the governor or by resolution of the general assembly pursuant to chapter 44 that is in effect with respect to COVID-19.

A COVID-19 medical liability action shall not be commenced in any court of the state later than one year after the date of the alleged harm, damage, breach, or tort unless tolled for proof of fraud, intentional concealment, or the presence of a foreign body which has no therapeutic or diagnostic purpose or effect in the person of the injured person.

(2) Senate Bill No. 1

Status: Introduced (November 13, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Civil damages or administrative sanctions for any failure, in the delivery or nondelivery of health care necessitated by an emergency.

Conduct Not Covered: Malicious misconduct or conduct intentionally causing damage.

Effective Date(s): On or after effective date of the Act, and also shall apply to all claims described in the section based on acts or omissions occurring during the state of emergency.

Summary: The act seeks to repeal section 44.045, RSmo, and to enact in lieu thereof a new section 44.045.1. which provides that any health care provider who provides care as necessitated by an emergency, including care necessitated by mutual aid agreements between political subdivisions and other public and private entities under section 44.090, will not be liable for civil damages or administrative sanctions for any failure, in the delivery or nondelivery of health care necessitated by the emergency, to exercise the skill and learning of an ordinarily careful health care provider in similar circumstances.

Immunity does not extend to damages, including exemplary and damages for aggravating circumstances, when a person has sustained serious injury as a result of malicious misconduct or conduct that intentionally caused damage to the plaintiff for acts or omissions in rendering such care. Evidence of negligence, including but not limited to, indifference to or conscious disregard for the safety of others will not constitute malicious misconduct or intentional misconduct. "Serious injury" means a positive diagnosis of an injury or illness resulting in medical treatment and inpatient hospitalization; permanent impairment of a bodily function; or death.

"Health care provider" includes, in part, any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility, dentist, registered or licensed practical nurse, psychologist, physician-in-training, and any person authorized to provide consumer directed services, personal care assistance services, or home-based care, and includes the respective employers or agents of any such person or entity. It further includes any other person or entity that provides health care services under the authority of a license or certificate, and the employers or agents of any

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

such person or entity; and any person, health care system, or other entity that takes measures to coordinate, arrange for, provide, verify, respond to, or address issues related to the delivery of health care services.

The provisions apply to all civil actions filed on or after the effective date of the act, and will apply to all claims described in the section based on acts or omissions occurring during the state of emergency.

MONTANA

(1) Senate Bill 65.

Status: Enacted (February 11, 2021).

Person(s) Covered: Property owners, health care providers, manufacturers and suppliers

Conduct Covered: Civil actions alleging injury, death, property damage (products liability claims only)

Conduct Not Covered: Gross negligence, willful and wanton misconduct, or an intentional tort.

Effective Date(s): February 11, 2021 until January 1, 2031

Summary: The bill protects against premises liability related Covid-19 claims, health care liability Covid-19 claims, product liability related Covid-19 claims. The bill also creates an affirmative defense claim for a person following any federal or state statute, regulation, order, or public health guidance related to COVID-19 applicable to the person or activity at issue. The bill additionally limits new causes of actions based on any government order, regulation, or public health guidance related to Covid-19.

In a premises liability claim, any property owner, tenant, or other person otherwise in control of a premise cannot be found liable for any civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises.

Health care providers are also immune from actions alleging civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the response to Covid-19. This encompasses: injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19; prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of Covid-19; acts or omissions while providing health care to individuals with a condition unrelated to Covid-19 when those acts or omissions support the response to Covid-19 such as, delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance; diagnosing or treating patients outside the normal scope of the health care provider's license or practice; using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use; conducting tests or providing treatment to an individual outside the premises of a health care facility; acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to Covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of Covid-19; or acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment. Exempt

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

is any act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to Covid-19 is not liable in a civil action caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product. "Qualified product" is defined in the bill to include: (a) personal protective equipment and supplies used to treat or prevent the spread of COVID-19; (b) medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat Covid-19 or to prevent its spread; (c) medical devices, equipment, and supplies used outside of their normal use to treat or prevent the spread of COVID-19; (d) medications used to treat COVID-19, including medications prescribed or dispensed for off-label use attempt to treat Covid-19; (e) tests to diagnose or determine immunity to COVID-19; and (f) a component of these items. Immunity is also afforded in claims alleging failure to provide proper instructions or sufficient warnings.

NEBRASKA

No Specific COVID-19 Legislation or Order.

NEVADA

(1) [Nevada Revised Statute § 414.110. Immunity and exemption.](#)

Status: Enacted.

Person(s) Covered: State and political subdivisions thereof; other agencies of the State and subdivisions thereof; workers.

Conduct Covered: Liability for the death of or injury to persons and damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith.

Effective Date(s): April 1, 2020 until modified or terminated by a subsequent directives.

Summary: The statute provides that all functions and other activities relating to emergency management are government functions and that the State, its political subdivisions, other agencies of the State, and political subdivisions thereof will be liable for death of or injury to persons, or to damage to property, as a result of any such activity.

Immunity does not extend to willful misconduct, gross negligence, or bad faith, as relates to workers.

"Worker" includes, without limitation, any full-time or part-time paid, volunteer or auxiliary employee of the State, of any political subdivision thereof, of other states, territories, possessions or the District of Columbia, the Federal Government, of any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing services for emergency management at any place in the State subject to the other or control of, or pursuant to a request of, the State Government or any political subdivision thereof.

(2) [Nevada Declaration of Emergency Directive 011.](#)

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Issued (April 1, 2020).

Person(s) Covered: All providers of medical services.

Conduct Covered: See Nev. Rev. Stat. § 414.110.

Conduct Not Covered: See Nev. Rev. Stat. § 414.110.

Effective Date(s): N/A.

Summary: The Directive provides that all providers of medical services related to COVID-19 are performing services for emergency management subject to the order or control of and at the request of State Government and shall be afforded the immunities and protections set forth in Nev. Rev. Stat. § 414.110., subject to the same exclusions therein. provides that all providers of medical services in the State of Nevada are authorized to practice outside the scope of their specialization, within the limits of their competency, to the extent necessary to augment and bolster Nevada's healthcare system during the COVID-19 crisis.

NEW HAMPSHIRE

No Specific COVID-19 Legislation or Order.

NEW JERSEY

- [J.S.A. 26:13-19, Immunity from liability and applicable definitions.](#)

Status: Enacted (Current with laws through L.2020, c.17).

Person(s) Covered: A person or private entity (including a health care provider) and the employees of the entity.

Conduct Covered: Liability for injury caused by an act or omission in connection with a public health emergency, or preparatory activities.

Conduct Not Covered: Conduct outside the scope of the authority granted by the act; conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct; acts or omissions that caused or contributed to the public health emergency.

Effective Date(s): September 14, 2005.

Summary: N.J.S.A. 26:13-19(c)(2) provides that a person or private entity, and the employees of the entity, will not be liable for an injury caused by an act or omission in connection with a public health emergency, or preparatory activities, provided that the action is undertaken pursuant to the exercise of the authority provided under the act.

Immunity is inapplicable for an injury that results from an act that is outside the scope of the authority granted by the act or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct.

“Private entity,” as used in subsection (c), includes but is not limited to a health care provider.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

- [Executive Order No. 122.](#)

Status: Issued (April 1, 2020).

Person(s) Covered: Individuals practicing a healthcare profession or occupation; individuals granted temporary authority to practice a healthcare profession or occupation; healthcare facilities; modular field treatment facilities; any other site designated by the Commissioner of the Department of Health for temporary use for the purpose of providing essential services.

Conduct Covered: Civil liability for any damages alleged to have been sustained as a result of the individual's acts or omissions undertaken in good faith while providing health care services or services in support of the State's COVID-19 response.

Conduct Not Covered: Acts or omissions constituting a crime, actual fraud, actual malice, gross negligence or willful misconduct.

Effective Date(s): At any time during the State of Emergency (retroactively applied).

Summary: The Executive Order extends the immunity granted in N.J.S.A. 26:13-19 to healthcare providers and provides immunity from civil liability for individuals practicing a healthcare profession or occupation in New Jersey, individuals granted temporary authority to practice a healthcare profession or occupation in New Jersey, healthcare facilities, modular field treatment facilities, any other site designated by the Commissioner of the Department of Health for temporary use. Immunity for civil liability is available for the purpose of providing essential services for any damages alleged to have been sustained as a result of an act or omission undertaken in good faith in the course of providing healthcare services or services in support of the State's COVID-19 response, whether or not within the scope of their practice and whether or not immunity is otherwise available under current law.

Immunity from civil liability is inapplicable to the extent that acts or omissions constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

"Healthcare facility" has the meaning provided by N.J.S.A. 26:13-2, which includes institutions, buildings or agencies operated and designed to provide health services, medical or dental treatment or nursing, rehabilitative, or preventative care to any person, and as more fully set forth in the definition.

- [2020 NJ Senate Bill No. 2333, Provides civil and criminal immunity to certain health care professionals and health care facilities during public health emergency and state of emergency; facilitates issuance of certain temporary licenses and certifications during public health emergency.](#)

Status: Passed Assembly (Both Houses) (April 13, 2020).

Person(s) Covered: Health care professional; health care facility or health care system that owns or operates more than one health care facility.

Conduct Covered: Civil damages for injury or death alleged to have been sustained as a result of an act or omission undertaken in good faith. As to a health care facility or a health care system that owns or operates more than one health care facility, criminal or civil liability for damages for injury or death alleged to have been sustained as a result of an act or omission in connection with allocation of mechanical ventilators or other scarce medical resources, subject to allocation plans.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Not Covered: Acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct.

Effective Date(s): March 9, 2020 (retroactive).

Summary: Under subsections (1)(c) and (d) of the Act, as adopted, a health care professional, a health care facility, or a health care system that owns or operates more than one health care facility would not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission in the course of providing medical services in support of the State's response to the outbreak of coronavirus disease during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020.

Immunity would also include any act or omission undertaken in good faith by a health care professional or healthcare facility or health care system to support efforts to treat COVID-19 patients and to prevent the spread of COVID-19 during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020, including but not limited to engaging in telemedicine or telehealth, and diagnosing or treating patients outside the normal scope of the health care professional's license or practice. The immunity granted pursuant to this provision would not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct, and shall be retroactive to March 9, 2020.

The Act provides that a health care facility or a health care system that owns or operates more than one health care facility would not be criminally or civilly liable for damages for injury or death alleged to have been sustained as a result of an act or omission by the facility or system or one or more of the facility's or system's agents, officers, employees, servants, representatives or volunteers during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 in connection with the allocation of mechanical ventilators or other scarce medical resources, if the health care facility or system adopts and adheres to a scarce critical resource allocation policy that at a minimum incorporates the core principles identified by the Commissioner of Health in an executive directive or administrative order, and the health care facility's or system's agents, officers, employees, servants, representatives and volunteers would not be civilly or criminally liable for an injury caused by any act or omission pursuant to the bill during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 pursuant to, and consistent with, such policy.

NEW MEXICO

No Specific COVID-19 Legislation or Order

NEW YORK

- [Executive Order 202: Declaring a Disaster Emergency in the State of New York \(Mar. 7, 2020\); Executive Order 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency \(March 23, 2020\).](#)

Status: Issued (March 23, 2020).

Conduct Covered: Civil liability for injury or death alleged to have been sustained directly as a result of an act or omission by person(s) covered.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: Physicians, physician assistants; specialist assistants; nurse practitioners; licensed registered professional nurses; licensed practical nurses.

Conduct Not Covered: Gross negligence.

Effective Date(s): March 23, 2020 – April 22, 2020.

Summary: Executive Order 202.10 provides in part that Subdivision (2) of section 6527, Section 6545, and Subdivision (1) of Section 6909 of the Education Law are modified and/or suspended to the extent necessary to provide that all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses are immune from civil liability 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. Immunity does not extend to medical professionals where it is established that such injury or death was caused by the gross negligence of the medical professional. As such, there is no immunity from suit.

Per Executive Order 202.5 and 202.10, the list of medical professionals authorized to provide medical services in New York State continues to grow, including but not limited to those authorized to practice in the United States but not licensed in the State of New York.

- Emergency or Disaster Treatment Protection Act, N.Y. Public Health Law, Article 30-D, §§ 3080 *et seq.*

Status: Repealed. See below.

Person(s) Covered: Health care facilities; health care professionals; volunteer organizations (all as defined by statute and by COVID-19 emergency rules).

Conduct Covered: Civil or criminal liability for harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care service in good faith.

Conduct Not Covered: Willful or intentional criminal misconduct; gross negligence; reckless misconduct, or intentional infliction of harm by the health care facility or health care professional, which do not include (for health care professionals or facilities) acts, omissions or decisions resulting from resource or staffing shortages.

Effective Date(s): March 7, 2020 (retroactive to Executive Order 202) to the expiration date of the COVID-19 emergency declaration.

Summary: Pursuant to the newly enacted Article 30-D of New York's Public Health Law, New York is providing broad-sweeping immunity from civil or criminal liability for harm or damages sustained as a result of COVID-19. Pursuant to Article 30-D, any health care facility or health care professional, as defined, will have immunity from civil or criminal liability for any harm or damage, as defined, alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services, as defined, so long as (a) the health care facility or professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule, as defined, or otherwise in accordance with applicable law, (b) the act or omission occurs in the course of providing health care services and treatment of individual is impacted by the health care facility or professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and (c) the health care facility or professional is arranging for or providing health care services in good faith.

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Additionally, volunteer organizations, as defined, are immune from civil or criminal liability for harm or damages irrespective of the cause of the harm or damage occurring in or at its facility or facilities arising from the state's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule.

The immunity for health care professionals, facilities, and volunteer organizations will not apply if the harm or damage is caused by an act or omission constituting willful or intentional criminal conduct, gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or professional providing health care services or by the volunteer organization. However, acts, omissions or decisions of health care professionals or facilities resulting from resource or staffing shortages are not considered willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

- Senate Bill No. S8835. An Act to amend the public health law, in relation to amending provisions regarding health care facilities and professionals during the COVID-19 emergency.

Status: Enacted (August 3, 2020).

Person(s) Covered: Health care facilities; health care professionals; volunteer organizations (all as defined by statute and by COVID-19 emergency rules).

Conduct Covered: Civil or criminal liability for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care service in good faith to an individual

Conduct Not Covered: Willful or intentional criminal misconduct; gross negligence; reckless misconduct, or intentional infliction of harm by the health care facility or health care professional, which do not include (for health care professionals or facilities) acts, omissions or decisions resulting from resource or staffing shortages.

Effective Date(s): August 3, 2020.

Summary: The Act amends the Emergency or Disaster Treatment Protection Act, N.Y. Public Health Law, Article 30-D, §§ 3080 *et seq.* Section 1 of the Act amends the definition of “health care services” that are eligible for immunity in the Emergency or Disaster Treatment Protection Act by removing “prevention” of COVID-19 from the definition of health care services. The Act clarifies that the immunity applies to the assessment or care of an individual as it relates to COVID-19, and removes the care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency declaration from the definition of “health care services.” The purpose is to narrow the scope of the liability protections, applying only when a health care facility or medical professional is providing direct care related to the diagnosis or treatment of COVID-19 and the care is impacted by COVID-19.

Section 2 of the Act removes from immunity, protections when a health care facility or health care professional is “arranging for” health care services.

Section 3 of the Act provides the effective date of “immediately” and applies to claims for harm or damages if the act or omission that causes such harm or damage occurred on or after the effective date, provided however that the act will not apply to any act or omission occurring after the expiration of the COVID-19 emergency declaration.

- Senate Bill S1577. An Act to repeal Article 30-D of the Public Health Law Relating to Emergency or Disaster Protection Act.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Enacted (April 6, 2021)

Person(s) Covered: N/A

Conduct Covered: N/A

Conduct Not Covered: N/A

Effective Date(s): Immediately upon passage.

Summary: Senate Bill 5177 repeals Article 30-D of the Public Health Law, also known as the Emergency or Disaster Treatment Protection Act, which provided immunity to health care facilities, health care professionals, and volunteer organizations, including nursing home administrators and executives. The bill repeals Article 30-D on the grounds that it uses severe liability standards as a means to insulate health care facilities, and specifically, administrators and executives of such facilities, from any civil or criminal liability for negligence, including nursing homes, who have seen nearly five thousand deaths since early May 2020. The enactment of Bill 5177 now potentially exposes health care facilities to lawsuits for deaths during the early days of the outbreak. However, the bill does not include language to retroactively erase the immunity provisions that have been in place for the past year, but does strip any immunity from March 7, 2020, when the broad legal protections for nursing homes became effective, and April 3, 2020, when the law was enacted.

NORTH CAROLINA

- C. Gen. Stat. § 166A-19.60. Immunity and Exemption (North Carolina Emergency Management Act).

Status: Enacted.

Person(s) Covered: State; political subdivision of the State; emergency management workers; or firm, partnership, association, or corporation complying with or reasonably attempting to comply with the North Carolina Emergency Management Act.

Conduct Covered: Liability for the death of or injury to persons, or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith.

Effective Date(s): October 1, 2012.

Summary: N.C. Gen. Stat. § 166A-19.60(a) of the North Carolina Emergency Management Act provides that the State, any political subdivision of the State, other agencies of the State or political subdivision thereof, and emergency management workers, firms, partnerships, associations, or corporations who comply with, or reasonably attempt to comply with the North Carolina Emergency Management Act, or any order, rule or regulation promulgated pursuant to its provisions, or pursuant to any ordinance relating to emergency management measures enacted by a political subdivision of the State, will not liable for the death of, or injury to, persons or for damage to property, as a result of any such activity.

Immunity does not extend to emergency management workers, firms, partnerships, associations, or corporations in cases of willful misconduct, gross negligence, or bad faith. Under subsection (b), the immunity provided to firms,

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

partnerships, associations, or corporations is subject to additional restrictions.

“Emergency management worker” is defined in subsection (e) to include any full or part-time paid, volunteer, or auxiliary employee of the state, other states, territories or possessions, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, or any agency or organization performing emergency management services at any place in the State, subject to the order or control of or pursuant to the request of the State government or any political subdivision thereof. “Emergency management worker” also includes any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by State agency and any person performing health care services under N.C. Gen. Stat. § 90-12.2.

- Executive Order No. 130, Meeting North Carolina’s Health and Human Services Needs.

Status: Issued (April 8, 2020).

Person(s) Covered: Emergency management workers (as defined by N.C. Gen. Stat. § 166A-19.60(e)) and as further designated in Executive Order.

Conduct Covered: See N.C. Gen. Stat. § 166A-19.60 and as further designated for those rendering aid in North Carolina pursuant to the Emergency Management Assistance Company.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith.

Effective Date(s): N/A.

Summary: Executive Order No. 130 provides that all persons who are licensed or otherwise authorized under the Executive Order to perform professional skills in the field of health care are requested to provide emergency services to respond to the COVID-19 pandemic and, to the extent they provide emergency services, constitute “emergency management workers” to the maximum extent allowed by N.C. Gen. Stat. § 166A-19.60(e).

Immunity does not extend in cases of willful misconduct, gross negligence, or bad faith.

Executive Order No. 130 further designates that pursuant to N.C. Gen. Stat. § 166A-46, officers and employees and emergency management workers as defined in N.C. Gen. Stat. § 166A-19.60(e) are considered agents of the State for tort liability and immunity purposes in utilization of the Emergency Management Assistance Compact (“EMAC”).^[3] Immunity from liability for any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used in connection with an attempt to render aid shall be extended to officers, employees or emergency management workers rendering aid in North Carolina pursuant to EMAC.

Immunity does not extend for those rendering aid in North Carolina pursuant to EMAC in cases of willful misconduct, gross negligence, or bad faith.

- Senate Bill 704, An Act to Provide Aid to North Carolinians in Response to the Coronavirus Disease 2019 (COVID-19) Crisis (Emergency or Disaster Treatment Protection Act).

Status: Enacted (May 4, 2020).

Person(s) Covered: Health care facility; health care provider; entity arranging for or providing health care services during COVID-19 emergency declaration; volunteer organization.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Covered: Civil liability for any harm or damages alleged to have been sustained as an act or omission.

Conduct Not Covered: Gross negligence; reckless misconduct; intentional infliction of harm.

Effective Date(s): March 10, 2020 (retroactive to Executive Order No. 116), and any subsequent time period during which a state of emergency is declared to be in effect during calendar year 2020 by the Governor in response to COVID-19.

Summary: Senate Bill 704 creates Article 1L of Chapter 90 of the General Statutes, entitled the Emergency or Disaster Treatment Protection Act, § 90-21.130, *et seq.* Section 90-21.133 provides that any health care facility, health care provider, or entity that has legal responsibility for the acts or omissions of a health care provider will have immunity from any civil liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services subject to three requirements. First, the health care facility, provider, or entity must be arranging for or providing health care services during the period of the COVID-19 emergency, and including but not limited to the arrangement or provision of those services pursuant to a COVID-19 emergency rule. Second, the arrangement or provision of health care services must be impacted, directly or indirectly (1) by a health care facility, provider, or entity's decisions or activities in response to or as a result of the COVID-19 pandemic, or (2) by the decisions or activities, in response to or as a result of the COVID-19 pandemic, of a health care facility or entity where a health care provider provides health care services. And third, the health care facility, provider, or entity must also be arranging for or providing health care services in good faith.

Volunteer organizations are also immune from civil liability for any harm or damages occurring in or at their facilities arising from the State's response and activities under the COVID-19 emergency declaration and in accordance with any COVID-19 emergency rule.

Immunity will not apply if the harm or damages were caused by an act or omission constituting gross negligence, reckless misconduct, or intentional infliction of harm. As to health care facilities, providers, or entities that have legal responsibility for the acts or omissions of a health care provider, the acts, omissions, or decisions resulting from a resource or staffing shortage will not be considered to be gross negligence, reckless misconduct, or intentional infliction of harm.

NORTH DAKOTA

- [North Dakota House Bill 1175](#)

Status: Enacted (April 23, 2021).

Person(s) Covered: Premise owners or possessors, health care providers and facilities, product manufacturers and distributors, any person facing a Covid-19 exposure claim.

Conduct Covered: Civil action alleging exposure or potential exposure to Covid-19.

Conduct Not Covered: An act intended to cause harm or an act that constitutes actual malice.

Effective Date(s): Retroactively from January 1, 2020.

Summary: North Dakota's HB 1175 provides a safe harbor from civil liability for an act or omission resulting in damage

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

or injury sustained from exposure or potential exposure to COVID-19 if the act or omission was in substantial compliance or was consistent with a federal or state statute, regulation, or order related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

Premise owners or possessors are immune from civil liability for any act or omission resulting in damage or injury sustained from the individual's exposure to COVID-19, unless the person (1) exposes the individual with actual malice; or (2) intentionally exposes the individual with the intent to cause harm.

Health care providers and facilities are also immune from civil liability for any act or omission in response to Covid-19 that causes or contributes, directly or indirectly, to the death or injury of an individual. This includes injury or death resulting from screening, assessing, diagnosing, caring for, triaging, or treating an individual with a suspected or confirmed case of Covid-19 or from prescribing, administering, or dispensing a pharmaceutical to treat or prevent a suspected or confirmed case of Covid-19. Immunity to health care providers and facilities does not extend to willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

The bill also protects against products liability claims against a person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to Covid-19. However, this immunity does not apply if the person had (1) actual knowledge of a defect in the product; and (2) the person recklessly disregarded a substantial and unnecessary risk the product would cause serious personal injury, death, or serious property damage; or (3) the person acted with actual malice.

OHIO

- 2019 Ohio House Bill No. 606. To grant civil immunity to a person who provides services for essential businesses and operations for injury, death, or loss that was caused by the transmission of COVID-19 during the period of emergency declared by Executive Order 2020-01D, issued on March 9, 2020.

Status: Enacted (September 14, 2020).

Person(s) Covered: Health care provider.

Conduct Covered: Civil tort liability for any injury, death, or loss to person or property.

Conduct Not Covered: Actions outside the skills, education, and training of the health care provider not taken in good faith and not taken in response to a lack of resources; reckless disregard for the consequences so as to affect the life or health of the patient; intentional misconduct or willful or wanton misconduct .

Effective Date(s): Date of Governor's Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19, through September 30, 2021.

Summary: The bill provides that a health care provider that provides health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, as a result of or in response to a disaster or emergency is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises from (a) an act or omission of a health care provider in the health care provider's provision, withholding, or withdrawal of those services; (b) any decision related to the provision, withholding, or withdrawal of those services; (c) compliance with an executive order or director's order issued during and in response to the disaster or emergency.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Immunity does not apply in a tort action if the health care provider's action, omission, decision, or compliance constitutes a reckless disregard for the consequences so as to affect the life or health of the patient or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.

A health care provider is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises because the provider was unable to treat, diagnose, or test the person for any illness, disease, or condition, including the inability to perform any elective procedure, due to an executive or director's order or an order of a board of health of a city or general health district issued in relation to an epidemic or pandemic disease or other public health emergency.

The section does not grant an immunity from tort or other civil liability to a health care provider for actions that are outside the skills, education, and training of the health care provider, unless the health care provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.

"Health care provider" means a health care professional, health care worker, direct support professional, behavioral health provider, or emergency medical technician or a home health agency, hospice care program, home and community-based services provider, or facility, including any agent, board member, committee member, employee, employer, officer, or volunteer of the agency, program, provider, or facility acting in the course of the agent's, board member's, committee member's, employee's, employer's, officer's, or volunteer's service or employment.

OKLAHOMA

(1) [2020 House Bill 300, COVID-19 Public Health Emergency Limited Liability Act.](#)

Status: Enacted (May 13, 2020).

Person(s) Covered: Health care facility; health care provider.

Conduct Covered: Civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19.

Conduct Not Covered: Gross negligence; willful or wanton misconduct.

Effective Dates: As of the effective date of the Act and until October 31, 2020, or until such time as the Governor affirmatively concludes the emergency declarations specified in the Act, whichever is later.

Summary: The COVID-19 Public Health Emergency Limited Liability Act creates a new section of the Oklahoma Statutes, Section 6404, Title 63. The Act provides that health care facilities and health care providers are immune from civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission during the COVID-19 public health emergency. The act or omission must occur in the course of arranging for or providing COVID-19 health care services for the treatment of the person. The person must also be impacted by the decisions, activities or staffing of, or the availability or capacity of space or equipment by, the health care facility or provider in response to or as a result of the COVID-19 public health emergency. The Act does not grant immunity for any act or omission in the provision of health care services to a person who did not have a suspected or confirmed diagnosis of COVID-19 at the time of services.

Immunity is inapplicable where the act or omission was the result of gross negligence or willful or wanton misconduct.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

OREGON

No Specific COVID-19 Legislation or Order.

PENNSYLVANIA

- [Order of the Governor of the Commonwealth of Pennsylvania to Enhance Protections for Health Care Professionals.](#)

Status: Issued (May 6, 2020).

Person(s) Covered: Licensed health care professionals; individuals of health care facilities, alternate care sites, community-based testing sites, and non-congregate care facilities.

Conduct Covered: Civil liability for death of or injury to a person or for loss or damage to property.

Conduct Not Covered: Willful misconduct; gross negligence.

Effective Dates: Effective May 6, 2020 and for the duration of the disaster emergency.

Summary: The Executive Order designates licensed health care professionals, health care facilities, alternate care sites, community-based testing sites, and non-congregate care facilities, as further described in the Executive Order, as agents of the Commonwealth solely and exclusively for the purpose of immunity from civil liability due to emergency services activities or disaster services activities related to the Commonwealth's COVID-19 disaster emergency response.

Individuals, and not the facilities or entities themselves, will be immune from civil liability from the death of or injury to a person or for loss of or damage to property as a result of the emergency services activity or disaster services activity described in the act. The grant of immunity does not extend to health care professionals rendering non-COVID-19 medical and health treatment or services.

Immunity does not apply in cases of willful misconduct or gross negligence.

- [House Bill 2384/Senate Bill 1161.](#)

Status: Referred to Committee on Judiciary (April 6, 2020).

Person(s) Covered: Person.

Conduct Covered: Civil and criminal liability.

Conduct Not Covered: Actual harm.

Effective Dates: Upon execution of the bill.

Summary: The bill would amend Title 42 of the Pennsylvania Consolidated Statutes to add a section 8340.4. Protected

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

business operations, which would provide immunity to a person from civil and criminal liability and from imposition of administrative sanction, including any liability or sanction imposed by a professional or occupational licensing board or commission, for engaging in a protected business operation.

Immunity from liability does not extend to liability arising from, or an imposition based on, the person causing actual harm.

“Actual harm” is defined as a documented injury or illness that is directly and proximately caused by the interaction with the person or the agents of the person.

“Protected business operation” is defined as, during a declared disaster emergency made under 35 Pa.C.S. § 7301(c) or after an order is issued under the act of April 23, 1956, known as the Disease Prevention and Control Law of 1955, (1) conducting a business transaction or (2) keeping a physical business location open.

- [House Bill No. 2546.](#)

Status: Referred to Committee on State Government (May 26, 2020).

Person(s) Covered: Person; covered provider.

Conduct Covered: Civil liability.

Conduct Not Covered: Reckless or intentional misconduct; intentional or grossly negligent acts or omissions.

Effective Dates: Immediately.

Summary: The bill proposes an amendment to The Administrative Code of 1929 to add a new article, Article XXI-D COVID-19 Good Samaritan Emergency Liability Waiver, to grant immunity for an act or omission made in response to the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency.

Section 2102-D of the Article provides that a person is not subject to civil liability arising from the use, nature or condition of equipment or other goods manufactured, modified, produced for or utilized, including an atypical or novel utilization, by a health care facility or health care practitioner.

Immunity will not apply to an injury or death to a person that results from an act or omission of the person constituting recklessness or intentional misconduct.

Section 2103-D of the Article provides that a covered provider, as defined by the Article, that is involved with or provides medical care will not be subject to civil or criminal liability as a result of an act or omission by the covered provider.

Immunity will not extend to an act or omission intentionally designed to harm or a grossly negligent act or omission which results in harm to an individual receiving medical care.

- [Senate Bill No. 1181.](#)

Status: Referred to Judiciary (June 4, 2020).

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: Health care practitioners; health care providers; volunteer practitioners.

Conduct Covered: Medical professional liability claim, medical liability action or other civil claim of negligence.

Conduct Not Covered: Claims or causes of action that merely coincide in time with the state of disaster emergency declared by the Governor when the act or omission giving rise to the claim or cause of action is not associated with the response to the state of disaster emergency; criminal actions; intentional torts; incidents of gross negligence.

Effective Dates: Immediately.

Summary: The bill proposes that after a declaration of disaster emergency declared by the Governor under 35 Pa.C.S. § 7301(c) and during the period of the state of disaster emergency, that the following will be immune from a medical professional liability claim, medical liability action or other civil claim of negligence for any act or omission in the course of rendering health care during the state of disaster emergency: (1) a health care practitioner or health care provider that provides health care services for or through a health care facility or a Federal, State or municipal governmental agency and provides the health care services in a manner that is outside or exceeds the normal scope of the health care practice or specialty of the health care practitioner or health care provider; (2) a volunteer practitioner that returns to the practice of medicine in response to the state of disaster emergency; (3) a health care practitioner or health care provider, acting in compliance with an executive order or guidelines issued by a Federal, State or municipal government in relation to the state of disaster emergency, that cancels, discontinues or otherwise alters the health care services provided by the health care practitioner or health care provider; (4) a health care practitioner or health care provider, acting in good faith, that engages in an action or omission which results in an injury to another because the health care practitioner or health care provider is unable to provide the required level or manner of care due to a lack of resources attributable to the state of disaster emergency.

Immunity will not apply to a claim or cause of action that merely coincides in time with the state of disaster emergency declared by the Governor when the act or omission giving rise to the claim or cause of action is not associated with the response to the state of disaster emergency. Immunity also will not apply to any criminal action, intentional tort or incident of gross negligence.

- [Senate Bill No. 1194, COVID-19 Exposure Liability Act.](#)

Status: Referred to Judiciary (June 16, 2020).

Person(s) Covered: Persons.

Conduct Covered: Civil liability.

Conduct Not Covered: Gross negligence.

Effective Dates: Immediately and to expire two years after the COVID-19 disaster declaration is terminated or expires under 35 Pa.C.S. §7301.

Summary: The bill proposes that a person that attempts, in good faith, to adhere to the COVID-19 emergency declaration, the Governor's 20200319 TWW COVID-19 Business Closure Order or any other executive order relating to COVID-19, or any guidance issued by the Department of Health or the Secretary of Health relating thereto, will not be liable for damages, injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course or performance of, or provision of business services.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Immunity does not apply where there is clear and convincing evidence of gross negligence.

Causes of action alleging injury resulting from exposure to COVID-19 must be brought not later than one year after the date the cause of action accrues. Any civil liability arising out of an act or omission or related to an injury that occurred during the operation of this act shall be subject to the provisions of the act in perpetuity.

RHODE ISLAND

- [RI Gen. Laws 30-15-15, Immunity from liability – Compensation for death or injury of disaster response workers \(Rhode Island Emergency Management Act\).](#)

Status: Enacted (Current through Chapter 20-6 of the 2020 2nd Regular Session).

Person(s) Covered: State; political subdivision of the State; agencies of the State or political subdivisions thereof; disaster response workers.

Conduct Covered: Liability for the death of, or injury to, persons, or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith. (Except as to State, any political subdivision of the State, and any other agencies of the State or political subdivision thereof.)

Effective Date(s): 1973

Summary: RI Gen. Laws § 30-15-15(a) of the Rhode Island Emergency Management Act provides that all functions of the chapter are declared to be governmental functions. Subsection (a) further provides that the State, any political subdivision of the State, other agencies of the State or political subdivision thereof, and disaster response workers who comply with, or reasonably attempt to comply with the Rhode Island Emergency Management Act, or any order, rule or regulation promulgated pursuant to its provisions, or pursuant to any ordinance relating to precautionary measures enacted by a political subdivision of the State, will not be liable for the death of, or injury to, persons or for damage to property, as a result of disaster response activities.

Immunity does not extend to disaster response workers in cases of willful misconduct, gross negligence, or bad faith.

“Disaster response worker,” pursuant to subsection (d), means any full- or part-time paid, volunteer, or auxiliary employee of the state, other states, territories or possessions, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, or any agency or organization, or any private person, firm, or corporation performing disaster response activities at any place in the State subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof.

- [Executive Order 20-21, Eighteenth Supplemental Emergency Declaration – Increasing Hospital and Nursing Facility Capacity, Extending Statutory Immunity.](#)

Status: Issued (April 10, 2020).

Person(s) Covered: Disaster response workers pursuant to R.I. Gen Laws § 30-15-15(a) and as amended/affirmed by Executive Order 20-21.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Covered: See R.I. Gen Laws § 30-15-15(a).

Conduct Not Covered: See R.I. Gen Laws § 30-15-15(a); negligence that occurs in the course of providing patient care to patients without COVID-19 whose care has not been altered by the existence of the disaster emergency.

Effective Date(s): Immediately and shall remain in full force and effect until May 8, 2020, unless renewed, modified or terminated by subsequent Executive Order.

Summary: Executive Order 20-21 provides that all persons and organizations subject to the Order, including health care facilities, health care workers, health care workers providing community-based health care, services at surge hospitals and services at existing hospitals, nursing facilities and alternative nursing care sites as deemed and/or affirmed to be “disaster response workers” entitled to immunity under R.I. Gen. Laws § 30-15-15(a).

In addition to conduct not covered pursuant to R.I. Gen Laws § 30-15-15(a), the Executive Order excludes immunity for negligence that occurs in the course of providing patient care to patients without COVID-19 whose care has not been altered by the existence of this disaster emergency.

SOUTH CAROLINA

(1) [Senate Bill 147, Covid-19 Liability Safe Harbor Act](#)

Status: Enacted (April 28, 2021).

Person(s) Covered: Health care providers, manufactures and suppliers, businesses, and government entities.

Conduct Covered: Any acts or omissions resulting in a coronavirus claim.

Conduct Not Covered: Gross negligence, reckless, willful, or intentional misconduct; or a failure to make any attempt to adhere to public health guidance.

Effective Date(s): Causes of action that arise between March 13, 2020, and June 30, 2021, or 180 days after the final state of emergency is lifted for COVID-19, whichever is later.

Summary: South Carolina’s Covid-19 Liability Safe Harbor Act provides immunity for claims alleging Covid-19 exposure. The act extends immunity to premises of a covered entity and operations, products, or services provided on-premises or off-premises for a covered entity. Additionally, health care providers are immune from liability for acts or omissions stemming from the prescription or dispense of medicines for off-label use to attempt to combat coronavirus; health care services related to the coronavirus that are outside of a provider’s professional scope of practice; or the use of equipment or supplies to combat or treat the coronavirus in a manner outside of the equipment’s or supplies’ normal use in medical practice or in the provision of health care services. Protection also applies to the manufacturing or donating of precautionary equipment or supplies, including personal protective equipment, due to shortages that occurred during the pandemic.

The act does not preclude an insured’s claim against an insurer’s business interruption insurance policy.

SOUTH DAKOTA

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

(1) House Bill 1046. An Act to Limit Liability for Certain Exposures to Covid-19

Status: Enacted (February 17, 2021).

Person(s) Covered: Health care providers, manufactures and suppliers, Any person in control of any premises

Conduct Covered: Liability for exposure, illness, injury, death or damages.

Conduct Not Covered: Intentional acts related to exposure claims. Gross negligence, recklessness, or willful misconduct related to medical liability and products liability claims.

Effective Date(s): Effective January 1, 2020 through December 31, 2022.

Summary: The bill provides protection against exposure claims unless the claimant can prove exposure resulted from intent to transmit the coronavirus and a positive Covid-19 diagnosis. A claimant must prove all elements of intentional exposure with intent to transmit Covid-19 by clear and convincing evidence. Likewise, Covid-19 premises liability claims are barred unless the claimant can prove the person inviting the claimant to the property had the intent to transmit the virus.

The bill also affirms that health care providers are not liable for any acts or omissions in response to Covid-19. Civil damages constituting gross negligence, recklessness, or willful misconduct are excluded from protection.

Products liability claims are also immune. Any action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of a disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 is barred unless the claimant can prove gross negligence, recklessness, or willful misconduct. The same applies to claims alleging insufficient instructions or failure to warn. The bill defines "qualified product" to include: personal protective equipment used to protect the wearer from Covid-19 or to prevent the spread of Covid-19; medical devices, equipment, and supplies used to treat Covid-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat Covid-19 or to prevent the spread of Covid-19; medical devices, equipment, and supplies used outside of their normal use to treat Covid-19 or to prevent the spread of Covid-19; medications used to treat Covid-19, including medications prescribed or dispensed for off-label use to attempt to treat Covid-19; tests to diagnose or determine immunity to COVID-19; or any component of the items listed. Protection does not apply to gross negligence, recklessness, or willful misconduct.

TENNESSEE

(1) Executive Order 53. An Order Regarding Limited Liability Protection for Health Care Providers in Response to COVID-19.

Status: Enacted (August 17, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Liability for illness, injury, death or damages.

Conduct Not Covered: Gross negligence; willful misconduct.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Effective Date(s): Effective from July 2, 2020 through August 17, 2020, when it was rescinded.

Summary: The Executive Order provides that in accordance with Tennessee Code Annotated, Section 58-2-107(l), health care providers who render services within the limits of their license, certification, or authorization are granted limited liability protection and will not be liable for any illness, injury, death, or damages related to the contraction of, or suspected contraction of, COVID-19 alleged to have been caused by acts or omissions within the limits of the provider's license, certification, registration, or authorization, including acts or omissions resulting from a lack of resources attributable to or arising out of the provider's response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.

The protections do not include any act or omission caused by gross negligence or willful misconduct.

(2) Tenn. Code Ann. § 29-34-802, Claims arising from COVID-19, Tennessee COVID-19 Recovery Act.

Status: Enacted (August 17, 2020).

Person(s) Covered: Persons.

Conduct Covered: Liability for loss, damage, injury, or death.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): August 17, 2020, and applies to all claims arising from COVID-19, except those which, on or before August 3, 2020, (a) filed a complaint or civil warrant; (b) filed a notice of claim with the Tennessee claims commission; or (c) notice was satisfied under the laws pertaining to healthcare liability claims. until repeal on July 1, 2020, but continues to apply to any injury occurring before that date to which none of the exceptions apply.

Summary: The bill enacts the Tennessee COVID-19 Recovery Act and makes other additions to present law. The Act provides that an individual or legal entity ("person") will not be liable for loss, damage, injury, or death (collectively referred to as an "injury") that arises from COVID-19.

Immunity will not extend to a claimant unless the claimant provides by clear and convincing evidence that the person caused the injury by an act or omission constituting gross negligence or willful misconduct. The Act requires that a claimant in an action alleging injury arising from COVID-19 must meet specific pleading requirements from which a trier could reasonably conclude that the injury was caused by the defendant's gross negligence or willful misconduct, including a certificate of good faith stating that the claimant or claimant's counsel has consulted with a physician duly licensed to practice in the state or a contiguous bordering state, and that the physician has provided a written statement confirming a signed, written medical opinion has been obtained which states that the physician believes the alleged loss, damage, injury or death was caused by an alleged act or omission of the defendant or defendants.

The Act does not create a cause of action, eliminate a required element of any existing cause of action, affect workers' compensation claims, or amend, repeal, alter, or affect any immunity or limitation of liability available under current law or contract.

(3) Senate Bill 8011.

Status: Sent to General Subcommittee of Senate Judiciary Committee (August 12, 2020).

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: N/A.

Conduct Covered: N/A.

Conduct Not Covered: N/A

Effective Date(s): Upon becoming law for healthcare liability actions for which notice is given on or after that date.

Summary: The Act would amend the Tennessee Code, Title 8; Title 9; Title 20; Title 28; Title 29, and Title 49 relative to civil liability. Tennessee Code Annotated, Section 29-26-121(a)(2) on written notices of claims would be amended to add a new subdivision which provides that if a claim for healthcare liability is based on a claim of exposure to or contraction of coronavirus, notice of a claim must include the date and location on which the person alleges the exposure or contraction occurred.

The Act would be effective as of the date of passage and apply to notice given on or after that date.

TEXAS

No Specific COVID-19 Legislation or Order.

UTAH

- [Senate Bill No. 3002, Emergency Health Care Access and Immunity Amendments.](#)

Status: Enacted (Apr. 22, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability for acts or omissions in the course of providing health care during a declared major public health emergency.

Conduct Not Covered: Gross negligence; intentional misconduct; malicious misconduct.

Effective Date(s): April 22, 2020.

Summary: Senate Bill No. 3002 creates a new section 2.7 of the Health Care Providers Immunity from Liability Act, § 58-13-1 *et seq.* and a new section 106 of the Utah Right to Try Act, § 58-85-101 *et seq.* Section 58-13-2.7 provides that as used in the section, “declared major public health emergency” means the same as that term is defined in § 58-85-106.

Section 58-85-106 provides that a health care provider is immune from civil liability for any harm resulting from any act or omission in the course of providing health care during a declared major public health emergency if the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared public health emergency, or if the act or omission was the direct result of providing health care to a patient for the illness or condition that resulted in the declared major public health emergency. Immunity applies even if the health care provider has a duty to respond or an expectation of payment or remuneration, and is in addition to any immunity protections that may apply under state

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

or federal law.

Immunity is inapplicable to the acts or omissions of the health care provider that are grossly negligent or intentional or malicious misconduct.

Section 58-85-106 further provides that it is not a breach of the applicable standard of care for a health care provider to provide health care that is not within the provider's education, training, or experience if it is within the applicable scope of practice for the type of license issued, the health care is provided in good faith, or there is an urgent shortage of health care providers as a direct result of the declared major public health emergency. Such immunity does not extend to health care that is grossly negligent or intentional or malicious misconduct.

Section 58-85-106 also provides qualified immunity from civil liability, criminal liability, or sanctions against the health care provider's license in certain respects.

"Health care provider" means the same as defined in § 78B-3-403, which includes various health care professionals and health care facilities.

"Declared major public health emergency" means a state of emergency declared by the governor under Section 53-2a-206 as the result of a major public health emergency.

VERMONT

- [20 V.S.A. §20, Immunities and Defenses.](#)

Status: Enacted (current through acts 1 – 92 and 94 – 99 of the Adjourned Session of the 2019-2020 Vermont General Assembly (2020)).

Person(s) Covered: The state, any of its agencies, state employees as defined in 3 V.S.A. § 1101, political subdivisions, local emergency planning committees, or individual, partnership, association, or corporations involved in emergency management activities; Any individual, partnership, association, corporation or facility that provides personnel, training or equipment through an agreement with the local emergency planning committee, the state emergency response commission or local emergency response officials.

Conduct Covered: Liability for death of or injury to persons or loss or damage to property.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): N/A

Summary: Section 20 of Vermont's emergency management act provides immunity from liability for the death of or any injury to persons or loss or damage to property resulting from an emergency management service or response activity, as defined by the Act. Any individual, partnership, association, corporation or facility that provides personnel, training or equipment through an agreement with the local emergency planning committee, the state emergency response commission or local emergency response officials is also immune to the same extent.

- [Addendum 9 to Executive Order 01-20, Extension of State of Emergency Declared March 13, 2020: Other COVID-19 Related Directives and Clarifications.](#)

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Issued (April 10, 2020).

Person(s) Covered: Health care facilities, health care providers, and health care volunteers, as defined by the Executive Order.

Conduct Covered: Civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, as further enumerated by 20 V.S.A. §20.

Conduct Not Covered: Willful misconduct or gross negligence.

Effective Date(s): April 10, 2020 until June 15, 2020 pursuant to Addendum 14 to Executive Order 01-20.

Summary: Addendum 9 to Executive Order 01-20 extends civil immunity protections under 20 V.S.A. §20 to specifically enumerated health care facilities, health care providers, and health care volunteers in engaging in emergency management service or response activity, all as further defined by the Executive order.

Immunity does not extend in instances of willful misconduct or gross negligence.

“Health Care Facilities” means State licensed nursing homes (as defined in 33 V.S.A. § 7102(7)) and Middlesex Therapeutic Community Residence, all State licensed assisted living residences (as defined in 33 V.S.A. § 7102(1)), Level III residential care homes (33 V.S.A. 7102(10)(A)), intermediate care facilities for individuals with intellectual disability (ICF/ID) (42 C.F.R. § 440.150), all State therapeutic community residences (as defined in 33 V.S.A. § 7102 (11)), Level IV residential care homes (33 V.S.A. § 7102 (10)(B)), all hospitals (as defined in 18 V.S.A. § 1902) and all alternate or temporary hospital sites and other isolation, quarantine or housing sites designated by the Commissioner of PSD/VEM for the treatment of, or alternate shelter for those who have been exposed to or infected with COVID-19.

“Health Care Providers” means all health care providers as defined by 18 V.S.A. § 9432(9), including volunteers, who are providing health care services in response to the COVID-19 outbreak and are authorized to do so.

“Health Care Volunteers” means 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.

VIRGINIA

- [Code § 8.01-225.01, Certain immunity for health care providers during disasters under specific circumstances.](#)

Status: Enacted (Current through the End of 2019 Reg. Session and include 2020 Regular Session cc. 1, 64, 198, 201, 202, 247, 249, 255, 278, 356, 478, 603 & 620).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for any injury or wrongful death arising from abandonment of duty to provide health care.

Conduct Not Covered: Gross negligence; willful misconduct.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Effective Date(s): July 1, 2014.

Summary: Section 8.01-225.01(A) of the Virginia Code provides that any health care provider who responds to a disaster by delivering health care to persons injured in such disaster will be immune from civil liability for any injury or wrongful death arising from abandonment by the health care provider of any person to whom the health care provider owes a duty of care when (i) a state or local emergency has been or subsequently is declared, and (ii) the provider was unable to provide the requisite health care to the person to whom he owed a duty of care as a result of the provider's voluntary or mandatory response to the disaster.

Immunity from liability does not extend to health care providers who commit gross negligence or willful misconduct.

"Health care provider" means those professions defined in Va. Code § 8.01-581.1, and includes persons, corporations, facilities, or institutions licensed to provide health care or professional services in the Commonwealth.

- Code § 8.01-225.02, Certain liability protections for health care providers during disasters.

Status: Enacted (Current through the End of 2019 Reg. Session and include 2020 Regular Session cc. 1, 64, 198, 201, 202, 247, 249, 255, 278, 356, 478, 603 & 620).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for any injury or wrongful death arising from delivery or withholding of health care.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): July 1, 2008.

Summary: Section 8.01-225.02(A) of the Virginia Code provides that any health care provider who responds to a disaster will be immune from liability for any injury or wrongful death arising from the delivery or withholding of health care when (i) a state or local emergency has been or subsequently is declared, and (ii) the 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 and which resulted in the injury or wrongful death at issue.

Immunity from liability does not extend to health care providers who commit gross negligence or willful misconduct.

"Health care provider" means those professions defined in Va. Code § 8.01-581.1, and includes persons, corporations, facilities, or institutions licensed to provide health care or professional services in the Commonwealth.

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in Va. Code § 44.146.16.

- Code § 8.01-225.03, Certain immunity for certain hospices, home care organizations, private providers, assisted living facilities, and adult day care centers during a disaster under specific circumstances.

Status: Enacted (October 13, 2020).

Person(s) Covered: Hospices, home care organizations, private providers, assisted living facilities, adult day care

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

centers.

Conduct Covered: Injury or wrongful death of a patient, resident or person receiving services arising from the delivery or withholding of care.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): Applicable to causes of action arising between March 12, 2020 and until such time as the declaration of a state of emergency related to the COVID-19 virus set forth in Executive order 51 (2020) is no longer in effect.

Summary: The newly enacted section provides that any (i) hospice licensed pursuant to § 32.1-162.3, (ii) home care organization licensed pursuant to § 32.1-162.9, (iii) private provider licensed by the Department of Behavioral Health and Developmental Services pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, (iv) assisted living facility licensed pursuant to § 63.2-1701, or (v) adult day care center licensed pursuant to § 63.2-1701 that delivers care to or withholds care from a patient, resident, or person receiving services who is diagnosed as being or is believed to be infected with the COVID-19 virus will not be liable for any injury or wrongful death of a patient, resident, or person receiving services arising from the delivery or withholding of care when the emergency and subsequent conditions caused by the emergency result in a lack of resources, attributable to the disaster, that render such hospice, home care organization, private provider licensed by the Department of Behavioral Health and Developmental Services, assisted living facility, or adult day care center unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and that resulted in the injury or wrongful death at issue.

Immunity will be in addition to, and not in lieu of, any immunities provided by state or federal law.

Immunity does not include gross negligence or willful misconduct.

- [Executive Order 60. Clarification of Certain Immunity from Liability for Healthcare Providers in Response to Novel Coronavirus \(COVID-19\).](#)

Status: Issued (April 28, 2020).

Person(s) Covered: See Va. Code §§ 8.01-225.01 and 8.01-225.02, above.

Conduct Covered: See Va. Code §§ 8.01-225.01 and 8.01-225.02, above.

Conduct Not Covered: See Va. Code Sections 8.01-225.01 and 8.01-225.02, above.

Effective Date(s): Until the expiration of Executive Order 51 unless sooner amended or rescinded.

Summary: Executive Order 60 declares COVID-19 as a “communicable disease of public health threat” as defined in Va. Code § 44.146.16, which constitutes a “disaster.”

The Executive Order further declares that “responds to a disaster,” as that phrase is used in § 8.01-225.01(A), is to include the temporary 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.

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

The Executive Order also declares that “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,” as that phrase is used in § 8.01-225.02(A), is to include but is not limited to: (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.

The Executive Order does not affect the right or ability to claim immunity from liability for any cause of action under any other federal or state law, regulation, rule or order or any theory of common law immunity.

WASHINGTON

- [Senate Bill 5271](#)

Status: Enacted (May 10, 2021).

Person(s) Covered: Health care providers.

Conduct Covered: N/A. This act permits additional proofs to be considered related to the standard of care for determining the liability of health care providers and facilities.

Conduct Not Covered: N/A.

Effective Date(s): Retroactive to February 29, 2020 and ends upon termination of the state of emergency.

Summary: Washington's Senate Bill 5271 provides liability protections to providers and facilities by amending the necessary elements of proof of injury during the Covid-19 pandemic. The bill provides a method for determining the standard of care during the state of emergency in response to the pandemic. The current standard of care is the level and types of care of a reasonably sensible practitioner possessing the degree of skill, care and learning possessed by other members of the same profession. However, the bill permits consideration of whether the act or omission was in good faith based upon federal, state, or local government guidance, direction, or recommendations in response to the pandemic that are applicable to the health care provider; or whether the act or omissions was due to a lack of resources including, but not limited to, available facility capacity, staff, and supplies, directly attributable to the pandemic.

WEST VIRGINIA

- [B. 277, COVID-19 Jobs Protection Act.](#)

Status: Enacted (March 19, 2021).

Person(s) Covered: Health care providers, Businesses, Manufactures/Suppliers, Individuals

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Covered: Loss, damage, physical injury, or death arising from COVID-19.

Conduct Not Covered: Intentional conduct with actual malice. In product liability claims, actual knowledge with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk.

Effective Date(s): Retroactively to any cause of action accusing on or after January 1, 2020.

Summary: S.B. 277 protects businesses, health care providers and individuals from being sued because of the Coronavirus pandemic. The bill's protection extends to claims alleging injuries from exposure to COVID-19; medical care provided to treat COVID-19 or delaying or modifying medical procedures; collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information, among other activities.

Additionally, any person that designs, makes, sells, or donates a (1) qualified product or (2) household cleaning supplies or personal protective equipment in response to COVID-19 that does not make such products in the ordinary course of the person's business is not liable for any personal injury, death, or property damage caused by the product's manufacturing or design, or a failure to provide sufficient warnings. However, this product liability protection does not apply if a person had actual knowledge of a defect; and acted with acted with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others; or acted with actual malice. The statute of limitations for Covid-19 product liability claims is one year.

The bill defines "qualified product" to include personal protective equipment, medical devices, equipment, and supplies used to treat Covid-9, prevent the spread of Covid019, test, diagnose, or determine immunity to Covid-19, and their components.

In work related injuries, worker's compensation benefits are the sole and exclusive remedy for any injury, disease, or death cause by Covid-19.

WISCONSIN

- [WI St. 895.4801. Immunity for health care providers during COVID-19 emergency \(2019 Wis. Act. 185 § 98\).](#)

Status: Enacted (April 15, 2020).

Person(s) Covered: Health care professionals; health care providers; the employees, agents, or contractors of a health care professional or health care provider

Conduct Covered: Civil liability for the death of or injury to any individual or any damages caused by actions or omissions, subject to certain additional requirements.

Conduct Not Covered: Reckless or wanton conduct; intentional misconduct.

Effective Date(s): March 12, 2020 (retroactive to Executive Order 72) until 60 days following the date that the state of emergency terminates.

Summary: WI St. 895.4801, 2019 Wis. Act. 185 § 98, provides civil immunity for health care professionals, health care providers, and the employees, agents, or contractors of health care professionals and health care providers for the death of injury to any individual or any damages caused by actions or omissions, that satisfy the following requirements:

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

(a) the action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020 or the 60 days following the date that the state of emergency terminates; (b) the actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following: (1) any direction, guidance, recommendation, or other statement made by a federal, state or local official to address or in response to the emergency, or disaster declared as described under paragraph (a); (2) any guidance published by the department of health services, the federal department of health and human services, or any subdivision or agencies of the federal department of health and human services relied upon in good faith.

Immunity is inapplicable under (2)(c) where the actions or omissions involve reckless or wanton conduct or intentional misconduct.

The section does not apply if WI St. 257.03 (Volunteer practitioners indemnified), 257.04 (Health care facilities indemnified), 323.41 (Liability of state or local unit of government), or 323.44 (Public shelters) applies.

“Health care professional” means an individual licensed, registered or certified by the medical examining board under subch. II of ch. 448 of the board of nursing under ch. 441.

“Health care provider” has the meaning given in s. 146.38(1)(b) and includes an adult family home, as defined in s. 50.01(1).

- [WI Senate Bill 1.](#)

Status: Enacted (February 25, 2021).

Person(s) Covered: Businesses, government entities, schools, nonprofit organizations, and any agents of same

Conduct Covered: Civil liability for death, injury, or damage caused by an act or omission

Conduct Not Covered: Reckless or wanton conduct; intentional misconduct.

Effective Date(s): March 1, 2020, but does not apply to any action not filed prior to the bill’s enactment.

Summary: The bill provides protection for Covid-19 exposure claims. The bill protects entities from civil liability for the death of or injury to any individual or damages caused by an act or omission resulting in or relating to exposure, directly or indirectly, Covid-19 in the course of or through the performance or provision of the entity’s functions or services. The bill defines “entity” as a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization. It also affords protection of any employer or business owner, employee, agent, or independent contractor of the entity.

The bill does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.

WYOMING

- [Bill SF 1002.](#)

Status: Enacted (May 20, 2020).

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Person(s) Covered: Health care provider (including retired or inactive), or other person; business entities.

Conduct Covered: Any liability.

Conduct Not Covered: Gross negligence; willful or wanton misconduct.

Effective Date(s): Immediately upon completion of all acts necessary for a bill to become a law.

Summary: The bill amended W.S. 35-4-114, Immunity from liability, to include business entities to those parties immune from liability. The amended W.S. 35-4-114 provides that during a public health emergency, as defined by W.S. 35-4-115(a)(i), any health care provider or other person, including a business entity, who in good faith follows the instructions of a state, city, town or county health officer or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith. The immunity also applies to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency as defined by W.S. 35-4-115(a)(i).

The immunity does not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

[1] This survey will be updated periodically to include additional legislation/executive orders addressing immunity for COVID-19 lawsuits.

[2] “Health care provider” under this provision is **not** limited “to only those medical personnel rendering emergency assistance voluntarily due to the emergency in the area.” *Lejeune v. Steck*, 138 So. 3d 1280, 1283 13-1017 (La. App. 5 Cir. 2014), *writ denied sub nom. Daigle v. Steck*, 149 So. 3d 800 (La. 2014).

[3] For information regarding the Emergency Management Assistance Compact, see summary above at Federal, (3).

National Survey of COVID-19 Medical Malpractice Immunity Legislation (As of May 24, 2021)

24 May 2021

Christopher P. Ferragamo,

(as of May 24, 2021) [1]

The below survey of federal and state legislation, guidance, and executive action provides information regarding enacted and proposed legislation and executive orders issued to provide immunity protections for liability, in certain respects, to health care professionals, facilities, and volunteers in the course of their treatment of individuals during the course of the COVID-19 pandemic and the declared national and state emergencies. The information provided herein is

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

a summary of the relevant portions of the proposed and enacted legislation and executive orders and is subject to change.

FEDERAL

- [Coronavirus Aid, Relief and Economic Security Act \(“CARES Act”\), Pub. L. 116-136 \(March 27, 2020\).](#)

Status: Enacted (March 27, 2020).

Person(s) Covered: Volunteer healthcare professionals.

Conduct Covered: Errors or omissions causing harm (simple negligence).

Conduct Not Covered: Willful or criminal misconduct; gross negligence; reckless misconduct; conscience flagrant indifference to the rights or safety of the individual; rendering of medical care under the influence of alcohol or intoxicating drugs.

Effective Date(s): From date of enactment, March 27, 2020, and only for the length of the public health emergency declared by the Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020 with respect to COVID-19.

Summary: Section 3215, Limitation on Liability for Volunteer Health Care Professionals During COVID-19 Emergency Response, preempts state law and provides immunity from federal and state malpractice lawsuits to healthcare professionals who volunteer to provide medical care during the COVID-19 national public health emergency and, through an act or omission of the professional, cause harm (physical, nonphysical, economic and noneconomic losses). To obtain the protection, the act or omission must occur (A) in the course of providing health care services, as defined; (B) in the health care professional’s capacity as a volunteer, as defined; (C) in the course of providing health care services that are within the scope of their professional license, registration, or certification and do not exceed it (based on State law in which act or omission occurs) and (D) in a good faith belief that the individual being treated is in need of healthcare services, without expectation of reimbursement (with the exception of travel) or payment.

The protections afforded are in addition to the protections afforded by the Volunteer Protection Act of 1997 (Pub. L. 105-19).

Immunity will not be available if a provider causes harm through willful or criminal misconduct, gross negligence, reckless misconduct, conscience flagrant indifference to the rights or safety of the individual, or the rendering of medical care under the influence of alcohol or intoxicating drugs (as determined pursuant to applicable State law).

- [Department of Health and Human Services Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 \(“PREP Act”\).](#)

Status: Published (March 17, 2020).

Person(s) Covered: Manufacturers; distributors; program planners; and qualified persons, and their officials, agents, and employees; and the United States, as defined in the Declaration.

Conduct Covered: Claims of loss caused, arising out of, relating to, or resulting from administration or use of

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

countermeasures to COVID-19 determined by the Secretary to constitute a present, or credible risk of a future public health emergency.

Conduct Not Covered: Willful misconduct.

Effective Date(s): February 4, 2020 through (1) the final day the emergency Declaration is in effect, or (2) October 1, 2024, whichever occurs first.

Summary: The Secretary of Health and Human Services issued a Declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to provide liability immunity (except for willful misconduct) for activities related to medical countermeasures for claims of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to COVID-19 determined by the Secretary to constitute a present, or credible risk of a future public health emergency. Such immunity is given to manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States. "Qualified persons" includes a licensed healthcare professional or other individual authorized to prescribe, administer, or dispense "Covered Countermeasures" under the law of the state in which the "Covered Countermeasure" was prescribed, administered or dispensed.

The PREP Act states that a "Covered Countermeasure" must be a "qualified pandemic or epidemic product," or a "security countermeasure," as defined, or a drug, biological product or device authorized for emergency use in accordance with Sections 564, 564A, or 564B of the FD&C Act. "Covered Countermeasures" include any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.

The PREP Act further authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services.

On March 24, 2020, the Secretary of Health and Human Services sent a guidance letter to state governors outlining the actions he has taken under the authority of the PREP Act and requesting that they also take immediate action on certain measures to respond to the COVID-19 pandemic. In so doing, the Secretary acknowledged that all 50 states and the District of Columbia have enacted laws protecting health care professionals under specified circumstances and that states should issue guidance summarizing the statutory scope of protections offered under their laws and the process necessary to attach those protections to a health care professional's services. The Secretary asked the states to analyze whether the state insurance commissioner could modify or temporarily rescind any provision in a medical malpractice policy issued in the state that may prevent coverage of a health care professional's work responding to COVID-19 in another state, and work with the insurers to have them waive each limitation in their policies. The Secretary further requested that the states take quick action to develop a list of the relevant state liability protections and waivers for health care professionals during a national or state emergency and provide public guidance so that health care professionals could "feel comfortable serving in expanded capacities on the frontlines of the COVID-19 emergency."

And on April 14, 2020, the General Counsel for the Department of Health and Human Services issued an Advisory Opinion clarifying the scope of liability immunity granted by the PREP Act COVID-19 Declaration published on March

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17, 2020 in the Federal Register. The Opinion, which is neither binding law nor a final agency action or order, addresses the influx of questions following the release of its Declaration. Specifically, it expands on four aspects of the COVID-19 Declaration: (1) Covered Countermeasures, (2) Covered Persons, (3) liability immunity under the “Reasonable Belief” standard, and (4) liability limitations. In relevant part, the Opinion expands immunity to include persons who comply with all the other requirements of the PREP Act and the conditions of the Secretary’s Declaration, even if not a “Covered Person,” if the entity or individual reasonably could have believed that the person was a “Covered Person.” The Opinion also puts the onus on the person seeking PREP Act immunity to determine whether their products are Covered Countermeasures, whether a person or entity is a Covered Person, whether reasonable precautions have been taken to facilitate the safe use of Covered Countermeasures, and in general, whether immunity applies to them and their activities.

NOTE: *On October 23, 2020, the U.S. Department of Health and Human Services’ Office of General Counsel issued, as modified, two advisory opinions, Opinions 20-03 and 20-04, interpreting the scope and application of liability immunity under the PREP Act. Opinion 20-03 addresses certain matters relating to pharmacists’ and pharmacy interns’ administration of vaccines recommended by the Advisory Committee on Immunization Practices. Opinion 20-04 emphasizes the breadth of PREP Act immunity and describes its potential application to, in part, medical product manufacturers and distributors, health care professionals, and other health care entities. On January 8, 2021, the General Counsel released Advisory Opinion 21-01 which addresses to what extent nursing homes and other healthcare facilities are protected under the PREP Act where patients or their estates allege that patients contracted COVID-19 because the facility, among other things, failed to provide staff with personal protective equipment, failed to teach the staff how to properly use that equipment, or failed to ensure that its staff used the personal protective equipment it was given. Although these advisory opinions are nonbinding and lack the force of law, they may inform future courts’ interpretation of PREP Act immunity.*

- Emergency Management Assistance Compact (EMAC), Pub. L. 104-321.

Status: Enacted (October 19, 1996).

Person(s) Covered: Officers or employees of a party state rendering aid in a requesting state pursuant to EMAC.

Conduct Covered: Tort liability and immunity in the requesting state for acts or omissions in good faith or on account of maintenance or use of any equipment or supplies in connection with EMAC.

Conduct Not Covered: Willful misconduct; gross negligence; recklessness.

Effective Date(s): N/A

Summary: The Emergency Management Assistance Compact (EMAC) is a multi-disciplinary mutual aid compact that permits, upon gubernatorial activation, that states may receive assistance from other states. Health care providers activated as part of EMAC would be considered agents of the state for purposes of tort liability and immunity. EMAC provides that no party state or its officers or employees rendering aid in another state pursuant to EMAC will be liable on account of any act or omission in good faith on the part of such forces while engaged, or on account of the maintenance or use of any equipment or supplies in connection with EMAC.

Good faith does not include willful misconduct, gross negligence, or recklessness.

- 3372, Health Care Workforce Protection Act of 2020 (Sen. Fischer).

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Status: Read twice and referred to the Committee on Health, Education, Labor, and Pensions (Mar. 2, 2020).

Person(s) Covered: Manufacturers; distributors; prescribers; and users.

Conduct Covered: Claims of loss caused, arising out of, relating to, or resulting from administration or use of certain respiratory protective devices as covered countermeasures.

Conduct Not Covered: Willful misconduct.

Effective Date(s): N/A

Summary: The Bill seeks to amend the Public Health Service Act to provide for treatment of certain respiratory protective devices as covered countermeasures for purposes of targeted liability protections for pandemic and epidemic products and security countermeasures, and for other purposes.

Willful misconduct has the meaning given it in the PREP Act.

- [3630, Facilitating Innovation to Fight Coronavirus Act \(Sen. Sasse\).](#)

Status: Introduced (May 6, 2020), read twice, and referred to the Committee on the Judiciary.

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability in any federal, state, or local proceeding.

Conduct Not Covered: N/A

Effective Date(s): During the duration of the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to that disease.

Summary: The bill proposes that no health care provider, as defined in 3000(j) Public Health Services Act, 42 U.S.C. 300jj(3)), should be liable in any federal, state, or local civil proceeding for (1) using or modifying a medical device for an unapproved use or indication; (2) practicing without a license or outside of an area of specialty if instructed to do so by an individual with such a license or with such an area of specialty; or (3) conducting the testing of, or the provision of treatment to, a patient outside of the premises of standard health care facilities, where such action was carried out to test, treat, or otherwise counter the effects of COVID-19 during the duration of the national emergency declared by the President with respect to COVID-19.

ALABAMA

- [AL Code § 31-9-16, Immunity of state, etc., from liability for torts resulting from emergency management activities; exemptions of emergency management workers from license requirements; powers, duties, etc., of emergency management workers \(Alabama Emergency Management Act of 1955\).](#)

Status: Enacted (Current through Act 2020-38).

Person(s) Covered: State; political subdivision of the State; agencies of the State or political subdivision thereof;

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

emergency management workers; individuals; partnerships; associations; corporations.

Conduct Covered: Liability for death of or injury to persons, or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith. (Not applicable to state and political subdivision.).

Effective Date(s): 1955.

Summary: AL Code § 31-9-16(a) designates all functions under Article 1 of the Alabama Emergency Management Act of 1955 as AL Code § 31-9-16(b) provides immunity from liability for torts resulting from emergency management activities and declares that emergency management workers (state employees and volunteers), individuals, partnerships, associations, or corporations complying with or reasonably attempting to comply with any order, rule, or regulation promulgated pursuant to the Alabama Emergency Management Act or other precautionary measures enacted by any political subdivision of the state, will not be liable for injury, death, or damage related to such activity.

Immunity will not be applicable in cases of willful misconduct, gross negligence, or bad faith for emergency management workers, individuals, partnerships, associations, and corporations.

“Emergency management” as defined by AL Code § 31-9-3(1), includes the preparation for and the carrying out of all emergency functions, other than military and other federal agency functions, to prevent, minimize, and repair injury and damage resulting from disasters caused by, in relevant part, a natural cause. The functions of emergency management include, in relevant part, medical and health services and rescue, and other functions related to civilian protection.

“Emergency management worker” as defined by AL Code § 31-9-16(d), includes any full- or part-time paid, volunteer, or auxiliary employee of the state, or other states, territories, possessions, or the District of Columbia, of the federal government, or any neighboring county or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in the state subject to the order or control of, or pursuant to, a request of, the state government or any political subdivision thereof. And pursuant to AL Code § 31-9-16(e), any “emergency management worker” possesses the same powers, duties, immunities, and privileges he or she would ordinarily possess if performing duties in the state, province, or political subdivision in which the emergency management worker is normally employed or rendering services.

AL Code § 31-9-23 provides that Article 1 should be construed liberally to effectuate its purpose.

- [Alabama Senate Bill No. 30, Coronavirus, Immunity for Certain Entities from Claims Relating to Contraction of or Exposure to Coronavirus.](#)

Status: Enacted (February 12, 2021).

Person(s) Covered: Business, Health Care Provider, Educational Entity, Church, Government Entity, Cultural Institution.

Conduct Covered: Civil liability resulting from any act or omission.

Conduct Not Covered: Wanton, reckless, willful, or intentional misconduct.

Effective Date(s): Retroactively from March 13, 2020 to December 31, 2021, or one year after a declared health

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

emergency relating to coronavirus expires, whichever is later.

Summary: The bill provides civil immunity protection for covered entities against any “health emergency claim”. A “covered entity” includes any business, health care provider, educational entity, church, government entity, cultural institution, or its agent. The bill defines “health emergency claims” as any claim that arises from is related to Coronavirus, including, but not limited to: “(a) alleged, actual, or feared exposure on a premises or arising from operation, products or services provided off-premises; (b) efforts to prevent or delay the spread of coronavirus, such as testing, monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating exposures or other information, or using or supplying precautionary equipment or supplies, such as personal protective equipment.”

Immunity does not extend to wanton, reckless, willful, or intentional misconduct. A covered entity is not liable unless the claimant can show by clear and convincing evidence that the covered entity did not reasonably attempt to comply with the then applicable public health guidance. “Applicable public health guidance” is defined as any proclamation, order, or rule Governor, the State Health Officer, or State Board of Health that is applicable to the type of covered entity and to the health emergency claim at issue. If a covered entity is found liable damages are limited to actual economic compensatory damages and punitive damages are only recoverable in wrongful death claims.

Health care providers, specifically, cannot be found liable for any act or omission of any health services negatively impacted by a lack of resources caused by the pandemic or the state’s response to the pandemic. If found liable damages are limited to actual economic compensatory damages only.

ALASKA

- [AS 09.65.091. Civil Liability for Responding to Disaster.](#)

Status: Enacted (current through March 26, 2020).

Person(s) Covered: Persons.

Conduct Covered: Liability for the death or injury of any person; damage to property caused by that person’s actions.

Conduct Not Covered: Intentional acts; reckless acts; gross negligence.

Effective Date(s): Current through March 26, 2020.

Summary: AS §09.65.091 provides that a person who provides equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other governmental agency during a state of emergency declared by an authorized representative of the state or local government, will not be liable for the death of or injury to any person or damage to any property caused by the person’s actions.

There is no immunity when the trier of fact finds that the person acted intentionally, recklessly, or with gross negligence.

- [2019 Alaska Senate Bill No. 241. Extending COVID 19 Declaration/Relief.](#)

Status: Enacted (April 10, 2020).

Person(s) Covered: Health care provider; manufacturer of personal protective equipment.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Covered: Civil liability resulting from an act or omission.

Conduct Not Covered: Gross negligence; recklessness; intentional misconduct.

Effective Date(s): March 11, 2020 to November 15, 2020.

Summary: The bill amends the uncodified law of Alaska to add a new section entitled **LIABILITY: PERSONAL PROTECTIVE EQUIPMENT**. The new section reads that in addition to the immunity available under AS 09.65.091 (above), and during the COVID-19 public health disaster emergency declared by the governor on March 11, 2020, a health care provider or manufacturer of personal protective equipment is not liable for civil damages resulting from an act or omission in issuing, providing, or manufacturing personal protective equipment in the event of injury or death to the user of the personal protective equipment if the personal protective equipment was issued, provided, or manufactured in good faith to respond to the COVID-19 public health disaster emergency.

Immunity does not extend for civil damages as a result of gross negligence, recklessness, or intentional misconduct. The health care provider or manufacturer of personal protective equipment must notify the user of the personal protective equipment that the equipment may not meet established federal standards and requirements.

“Health care provider” has the meaning given in AS 18.15.395 (which includes any person providing health care services, hospitals, medical clinics or offices, special care facilities, medical laboratories, and emergency medical works) and a nursing home.

- [Alaska H.B.76, Extending COVID 19 Disaster Emergency](#)

Status: Enacted (May 1, 2021).

Person(s) Covered: State agencies and employees, licensed professionals, businesses and business employees

Conduct Covered: Civil liability resulting from an act or omission.

Conduct Not Covered: Gross negligence; recklessness; intentional misconduct.

Effective Date(s): Retroactive March 11, 2020

Summary: House Bill 76 ensures the continuation of COVID-19 federal relief to impacted Alaskans and liability protections for Alaska businesses and state agencies and employees. The bill provides for civil and criminal immunity for acts performed in good faith based by state agencies and state employees. Additionally, licensed professionals such as athletic trainers, concert promoters, dentists, therapists, physicians, nurses, nursing home administrators, pharmacists, real estate agents, social workers, and veterinarians, are immune from disciplinary action for sickness, death, economic loss, and other damages suffered from exposure to COVID-19 in the course of the licensee’s practice of the licensee’s trade or profession. The bill further extends civil liability immunity to businesses and business employees against claims alleging sickness, death, economic loss, or other damages from exposure to Covid-19 while patronizing the business.

Immunity does not extend to acts amounting to gross negligence, recklessness, or intentional misconduct.

ARIZONA

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

- R.S. § 36-790, Privileges and immunities.

Status: Enacted (Current through legislation effective March 27, 2020).

Person(s) Covered: Person; health care provider.

Conduct Covered: Civil or criminal liability if acting in good faith.

Conduct Not Covered: N/A

Effective Date(s): May 23, 2002.

Summary: A.R.S. § 36-790.B. provides that a person or health care provider undertaking any activity required by A.R.S. Title 36, Chapter 6, Article 9, Enhanced Surveillance Advisories and Public Health Emergencies, including reporting, and participating in quarantine and isolation procedures, is immune from civil or criminal liability if the person or health care provider acted in good faith.

Subsection C. further provides that the immunities prescribed in A.R.S. § 26-314 for state, political subdivisions and officers, agents, employees and emergency workers extends to § 36-787 (public health authority), § 36-788 (isolation and quarantine), and § 36-789 (due process for isolation) during a state of emergency or state of war emergency.

- Executive Order 2020-13, Enhanced Surveillance Advisory **COVID-19**.

Status: Issued (March 23, 2020).

Person(s) Covered: Person; health care provider.

Conduct Covered: Civil or criminal liability if undertaking any activity required by the Enhanced Surveillance Advisories and Public Health Emergencies provisions of the Arizona Code, including reporting, and acting in good faith.

Conduct Not Covered: N/A

Effective Date(s): March 23, 2020 and effective for 60 days therefrom unless extended.

Summary: Executive Order 2020-13 identifies that pursuant to A.R.S. § 36-790(B), a person or health care provider undertaking any activity required by A.R.S. Title 36, Chapter 6, Article 9, which is the Enhanced Surveillance Advisories and Public Health Emergencies (“ESAPHE”) provisions of the Arizona Code, is immune from civil or criminal liability if the person or health care provider acted in good faith. The immunity extends to the undertaking of reporting, as defined by the ESAPHE.

- Executive Order 2020-27, The “Good Samaritan” Order Protecting Frontline Healthcare Workers Responding to the COVID-19 Outbreak; Executive Order 2020-42, Renewal of Executive Order 2020-27, The “Good Samaritan” Order.

Status: Issued (April 9, 2020); Issued (June 25, 2020).

Person(s) Covered: Arizona healthcare professionals; volunteer healthcare professionals; Arizona Emergency Medical Care Technician; Arizona healthcare institutions; any entity operating a modular field treatment facility; any other site

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

whether or not it is a licensed healthcare institution designated by the Director of the Arizona Department of Health Services for temporary use.

Conduct Covered: Civil liability for triage decisions made in the course of providing medical services based on a good faith reliance of mandatory or voluntary state-approved protocols and acts or omissions undertaken in good faith while providing healthcare services, all in support of the State's public health emergency declaration for COVID-19.

Conduct Not Covered: Gross negligence or reckless or willful misconduct including, but not limited to, rendering medical care services under the influence of alcohol or an intoxicating drug.

Effective Date(s): April 9, 2020 through December 31, 2020 (as extended by Executive Order 2020-42).

Summary: Executive Order 2020-27 provides immunity from civil liability for triage decisions made in the course of providing medical services based on good faith reliance of mandatory or voluntary state-approved protocols for an Arizona healthcare professional, a licensed Emergency Medical Care Technician, a licensed Arizona health care institution, an entity operating a modular field treatment facility, or any other site whether or not it is licensed if it is designated by the Director of the Arizona Department of Health Services for temporary use in support of the State's COVID-19 response. A licensed Emergency Medical Care Technician is presumed to have acted in good faith in the course of providing emergency care services.

The Executive Order further provides immunity from civil liability for acts or omissions undertaken in good faith by one or more of the agents, officers, employees, representatives, or volunteers of a licensed Arizona healthcare institution, any entity operating a modular field treatment facility, or any other site whether or not it is licensed if it is designated by the Director of the Arizona Department of Health Services for temporary use in support of the State's COVID-19 response.

Immunity is not provided for gross negligence or reckless or willful misconduct, including but not limited to the healthcare professional, volunteer or other individual rendering medical care services under the influence of alcohol or an intoxicating drug.

The immunities granted for actions or omissions undertaken during the term of the Executive Order survive expiration of the Executive Order.

ARKANSAS

- [Executive Order 20-18, Executive Order to Amend Executive Order 20-03 regarding the Public Health Emergency Concerning COVID-19 for the Purpose of Equipping Health Care Professionals with the Tools Necessary to Combat the COVID-19 Emergency.](#)

Status: Issued (April 13, 2020).

Person(s) Covered: Physicians; physician assistants; specialist assistants; nurse practitioners; licensed registered nurses; and licensed practical nurses, whether employed by the State or Federal Government, a private entity, or non-profit entity.

Conduct Covered: Liability for any injury or death alleged to have been sustained directly as a result of an act or omissions by a medical professional in the course of providing medical services in support of the COVID-19 outbreak or implementation of measures to control the cause.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Not Covered: Acting outside the scope of his or her practice unless redeployed as a result of Section 3(d) of the Order; gross negligence; willful misconduct; bad faith.

Effective Date(s): April 13, 2020 and for the duration of the emergency.

Summary: Executive Order 20-18 suspends the definition of “emergency responder” in Ark. Code Ann. § 12-75-103(7)(C) of the Arkansas Emergency Services Act of 1973 to the extent necessary to provide immunity from liability to “emergency responders,” defined in (4) of the Executive Order to include physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses. Immunity from civil liability is provided 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 COVID-19 outbreak or the implementation of necessary measures to control the causes of the COVID-19 epidemic.

Immunity does not extend to an emergency responder who, as a result of his or her act or omissions, caused an injury or death due to acting outside the scope of his or her practice unless redeployed as a result of Section 3(d) of the Executive Order, or acting in gross negligence, willful misconduct, or bad faith.

- [Executive Order 20-34, Executive Order Pursuant to the Public Health Emergency Concerning COVID-19, As Declared in Executive Order 20-03 and Extended by Executive Order 20-25, For the Purpose of Ensuring Access to Healthcare Resources to Treat COVID-19.](#)

Status: Issued (June 15, 2020).

Person(s) Covered: Healthcare providers.

Conduct Covered: Liability for any death, injury or property damage; liability for using any prescription drug or device to treat a known or suspected COVID-19 infection subject to specific requirements.

Conduct Not Covered: Willful, reckless, or intentional misconduct.

Effective Date(s): June 15, 2020.

Summary: The Order provides that pursuant to Ark. Code Ann. § 12-75-103, Healthcare Providers, as defined by the Order, pursuant to Ark. Code Ann. § 12-75-128, are immune from liability for any death, injury or property damage alleged to have been sustained as a result of an act or omission by such Healthcare Provider in the course of providing COVID-19 related emergency management functions during the public health emergency. The act or omission must occur as the result of a good faith effort on the part of the Healthcare Provider and was the direct result of the Healthcare Provider’s providing a Healthcare Service, as defined by the Order, to a patient for the treatment and mitigation of COVID-19 or the symptoms of COVID-19 during the COVID-19 public health emergency.

Immunity will not extend to an act or omissions that is willful, reckless, or intentional misconduct.

Immunity from liability also extends to Healthcare Providers using any prescription drug or device to treat a known or suspected COVID-19 infection provided that: (i) prescription of the drug or device is within the scope of a Healthcare Provider’s license; (ii) the Healthcare Provider prescribes the drug or device in accordance with the most current written recommendations of the U.S. Government agency; and (iii) the Healthcare Provider informs the patient of known positive and negative outcomes of the drug or device and documents the patient’s informed consent to the treatment in the patient’s medical records.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

CALIFORNIA

No Specific COVID-19 Legislation or Order.

COLORADO

No Specific COVID-19 Legislation or Order.

CONNECTICUT

- Executive Order No. 7V, Protection of Public Health and Safety During COVID-19 Pandemic and Response – Safe Workplaces, Emergency Expansion of the Healthcare Workforce.

Status: Issued (April 7, 2020).

Person(s) Covered: Health care professional; health care facility.

Conduct Covered: Civil liability for death or injury allegedly sustained because of an act or omission undertaken in good faith.

Conduct Not Covered: Acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act pursuant to Section 4-275 et seq. or 31 U.S.C. §3729 et seq.

Effective Date(s): At any time during the public health and civil preparedness emergency declared on March 10, 2020, including any period of extension or renewal, and including acts or omissions occurring prior to the issuance of the Executive Order attributable to COVID-19 response efforts.

Summary: Executive Order No. 7V supersedes Executive Order No. 7U, Section 1 – Protection from Civil Liability for Actions or Omissions in Support of the State's COVID-19 Response and replaces it with a provision providing that any health care professional or health care facility, as defined, shall be immune from suit for 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. Such acts or omissions include, but are not limited to, 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.

Immunity will not extend to acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act pursuant to Section 4-275 et seq. or 31 U.S.C. §3729 et seq.

"Health care facility" as defined by the Executive Order, includes facilities designated by the Commissioner of the Department of Public Health for temporary use for the purposes of providing essential services in support of the State's COVID-19 response. "Health care professional" includes an individual licensed, registered, permitted, or certified in any state in the United States and any retired professional, professional with an inactive license, or volunteer approved by the Commissioner of the Department of Public Health or her designee.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

DELAWARE

- Joint Order of the Department of Health and Social Services and The Delaware Emergency Management Agency.

Status: Issued (March 24, 2020).

Person(s) Covered: Out-of-state health care provider; inactive health care provider; qualified person appointed pursuant to the Order.

Conduct Covered: Civil liability (and indemnification from the State).

Conduct Not Covered: Gross negligence; wanton negligence.

Effective Date(s): March 24, 2020.

Summary: The Joint Order provides that any out-of-state health care provider, inactive health care provider, or qualified person appointed pursuant to the Joint Order is considered a public employee under 10 Del. C. §§ 4001-4002 which provides for immunity from civil suit or proceeding or administrative tribunal, and indemnification from the State, for civil liability alleged against public officers and employees provided that the act or omissions arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlements or privileges or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member has supervisory authority. The act or omissions must have been done in good faith and with the belief that the public interest would best be served by the act or omission.

Immunity does not extend to acts or omissions done with gross or wanton negligence.

DISTRICT OF COLUMBIA

- C. Code § 7-2304.01. Issuance of public health emergency executive order.

Status: Re-enacted (March 17, 2020 pursuant to D.C. Act 23-247, § 301(b)).

Person(s) Covered: Licensed health care providers from the District of Columbia or other jurisdictions.

Conduct Covered: Civil liability for damages for any actions taken within the scope of employment or voluntary service.

Conduct Not Covered: Gross negligence.

Effective Date(s): March 17, 2020.

Summary: D.C. Code § 7-2304.01(d)(3) provides that a public health emergency executive order may include terms that exempt licensed health care providers, either from the District of Columbia or from other jurisdictions, for civil liability for damages for any actions taken within the scope of the provider's employment or voluntary service to implement the provisions of the District of Columbia response plan.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Immunity from civil liability will not extend to instances of gross negligence.

- C. Act 23-286, COVID-19 Response Supplemental Temporary Amendment Act of 2020

Status: Enacted (April 10, 2020).

Person(s) Covered: Person(s); employee of the District of Columbia not otherwise exempt under existing law; contractor providing services arising out of a contract with the District of Columbia.

Conduct Covered: Civil liability for damages for actions taken while acting within the scope of their employment or organization's purpose, voluntary service, or scope of work.

Conduct Not Covered: Gross negligence.

Effective Date(s): Authorized to extend the 15-day March 11, 2020 emergency executive order and public health emergency executive order for an additional 90-day period, and to be extended for additional 15-day periods by the Mayor.

Summary: The Act amends The District of Columbia Public Emergency Act of 1980 (D.C. Law 3-149; D.C. Official Code § 7-2301 et seq.) by adding a new paragraph (3A) which would exempt any person, employee of the District of Columbia not otherwise exempt under existing law, or contractor providing services arising out of a contract with the District of Columbia from civil liability for damages for actions taken while acting within the scope of their employment or organization's purpose, voluntary service, or scope of work to implement the provisions of the District of Columbia's response plan. Such immunity is solely for actions taken during the public health emergency.

Immunity from civil liability will not extend in instances of gross negligence.

FLORIDA

No Specific COVID-19 Legislation or Order.

GEORGIA

- Code § 38-3-35, Immunity from liability of agencies and emergency management workers (Georgia Emergency Management Act of 1981).

Status: Enacted (Current through Laws 2020, Act 322).

Person(s) Covered: State or political subdivision of the state; agents or representatives of the State or any political subdivision thereof; volunteer; auxiliary emergency management workers.

Conduct Covered: Liability for death or injury to person or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith. (Not applicable to state and political subdivision.)

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Effective Date(s): 1981.

Summary: Pursuant to Ga. Code § 38-3-35(b), the State, any political subdivision of the State, the employees, agents, or representatives of the State or any political subdivision thereof, volunteer or auxiliary emergency management workers, and members of any agency engaged in any emergency management activity complying with or reasonably attempting to comply with Articles 1 through 3 of the Georgia Emergency Management Act of 1981, or any order, rule, or regulation promulgated pursuant to Articles 1 through 3, or any ordinance relating to precautionary measures enacted by any political provisions of Articles 1 through 3 or political subdivision of the State, are not liable for the death of or the injury to a person or for damage to property as a result of any such activities.

Immunity does not extend to employees, agents, or representatives of the state or any political subdivision thereof, any volunteer or auxiliary emergency management worker or member of any agency engaged in any emergency management activity for death of or the injury to a person or for damage to property where the actions constitute willful misconduct, gross negligence, or bad faith.

- Executive Order 04.14.20.01, Designation of Auxiliary Emergency Management Workers and Emergency Management Activities.

Status: Issued (April 14, 2020).

Person(s) Covered: Healthcare institutions; medical facilities; their employees, staff, and contractors.

Conduct Covered: See Ga. Code § 38-3-35, above.

Conduct Not Covered: See Ga. Code § 38-3-35, above.

Effective Date(s): April 14, 2020 until conclusion of the Public Health State of Emergency Declared in Georgia Executive Order 03.14.20.01 and renewed by Executive Order 04.08.20.02. The Order shall carry forward with the Public Health State of Emergency until such state of emergency is terminated or ceases to be renewed by the Governor.

Summary: Executive Order 04.14.20.01 orders that health care institutions, medical facilities, and their employees, staff, and contractors, as defined in Ga. Code §§ 31-7-1(4)(A), (C)-(G) and 31-7-1(5) are considered “auxiliary emergency management workers” and as conducting “emergency management activities,” as those terms are used in Georgia’s Emergency Management Act of 1981, Ga. Code § 38-3-35, which grants immunity from liability for death of or injury to a person or for damage to property in the absence of willful misconduct, gross negligence, and bad faith in carrying out activities required under Articles 1 through 3 of the Emergency Management Act.

- 2019 S.B. 359, Georgia COVID-19 Pandemic Business Safety Act.

Status: Enacted (August 5, 2020).

Person(s) Covered: Healthcare facility; healthcare provider; entities; individuals.

Conduct Covered: Liability for transmission, infection, exposure, or potential exposure of COVID-19, acts or omissions in arranging or providing healthcare services or medical care to the claimant resulting in injury or death, or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Not Covered: Gross negligence; willful and wanton misconduct; reckless infliction of harm; or intentional infliction of harm.

Effective Date(s): Upon approval by Governor or upon becoming law without such approval or on August 7, 2020, whichever occurs first, until July 14, 2021 (and not applying to any causes of action accruing thereafter).

Summary: 2019 S.B. 359, Georgia COVID-19 Pandemic Business Safety Act adds a new chapter, Chapter 16, 51-16-1 *et seq.*, which provides, in relevant part, immunity to healthcare facilities, healthcare providers, entities, and individuals for a COVID-19 liability claim, which is defined as (A) transmission, infection, exposure, or potential exposure of COVID-19 to a claimant; (B) acts or omissions in arranging for or providing healthcare services or medical care to the claimant resulting in injury or death of the claimant for COVID-19 or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant; or (C) manufacturing, labeling, donating, or distributing personal protective equipment or sanitizer that is directly related to providing such personal protective equipment or sanitizer to claimant by any entity during a public health state of emergency for COVID-19, which departs from the normal manufacturing, labeling, donating, or distributing personal protective equipment of such entity that proximately results in injury to or death of a claimant. The immunity set forth is provided in addition to, and does not in any way limit, any other immunity protections that may apply under state or federal law.

To the extent that a COVID-19 liability claim arises out of transmission, infection, exposure, or potential exposure of COVID-19 at any healthcare facility or on the premises of any healthcare provider, there is a rebuttable presumption of assumption of the risk when a healthcare facility or a healthcare provider has posted at the point of entry, if present, to the premises, a sign of at least one-inch Arial font placed apart from other text stating a statutorily-prescribed warning as to assumption of risk.

Immunity does not extend where there is proof of gross negligence, willful and wanton misconduct, reckless infliction of harm or intentional infliction of harm.

“Healthcare facility” is defined as having the same meaning as “healthcare facility” as provided for in paragraph (17) of Code Section 31-6-2 and all related parties; as “institution” as provided for in subparagraphs (A) and (C) through (G) of paragraph (4) and paragraph (5) of Code Section 31-7-1 and all related parties; as “end stage renal disease” as provided for in paragraph (6) of Code Section 31-44-1 and all related parties; and shall mean the recipient of a contract as authorized in paragraph (5) of Code Section 37-1-20 and any clinical laboratory certified under the Clinical Laboratory Improvement Amendments in Section 353 of the Public Health Service Act, 42 U.S.C. Section 263a. Such term will not be construed to include premises.

“Healthcare provider” is defined as any physician or other person licensed or otherwise authorized in Georgia to furnish healthcare services, including, but not limited to, any dentist, podiatrist, optometrist, pharmacist, psychologist, clinical social worker, advanced practice registered nurse, registered optician, licensed professional counselor, physical therapist, massage therapist, marriage and family therapist, chiropractor, athletic trainer qualified pursuant to Code Section 43-5-7, occupational therapist, speech-language pathologist, audiologist, dietitian, physician assistant, cardiac technician, emergency medical technician, paramedic, or related parties.

“Medical care” is defined as any act defined as the practice of medicine under Code Section 43-34-21.

HAWAII

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

- Executive Order No. 20-05.

Status: Issued (April 16, 2020).

Person(s) Covered: Health care facilities; health care professionals; health care volunteers.

Conduct Covered: Civil liability for any death or injury to persons, or property damage.

Conduct Not Covered: Willful misconduct; gross negligence; recklessness.

Effective Date(s): For the “emergency period” unless terminated by separate proclamation, whichever shall occur first.

Summary: Executive Order 20-05 provides that health care facilities, health care professionals, and health care volunteers, as defined by the Order, are immune from civil liability for any death or injury to persons, or property damage, alleged to have been caused by any act or omission by the health care facility, health care professional, or health care volunteer, which death, injury, or property damage occurred at a time when the health care facility, health care professional, or health care volunteer was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak. Health care facilities, health care professionals, and health care volunteers must in good faith comply completely with all state and federal orders regarding the disaster immunity.

Immunity is inapplicable if it is established that such death, injury, or property damage was caused by willful misconduct, gross negligence, or recklessness.

As defined by the Order, “health care facility” means any program, institution, place, building, or agency or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated or designated to provide medical diagnosis, treatment, nursing, rehabilitative, or preventative care to any person or persons. The term also includes statutorily licensed or certified facilities pursuant to Hawaii Revised Statutes § 321-11(10).

“Health care professional” means physicians and surgeons and others licensed pursuant to chapter 453, podiatrists, dentists, psychologists, nurses, veterinarians, acupuncturists, massage therapists, naturopathic physicians, chiropractors, occupational therapists, physical therapists, respiratory therapists, speech pathologists, audiologists, and pharmacists (licensed pursuant to the Hawaii Revised Statutes), 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 Hawaii Emergency Management Agency (HIEMA) or Hawaii Department of Health (HDOH) pursuant to the Governor’s COVID-19 outbreak Emergency Proclamations.

“Health care volunteer” means all volunteers or medical, nursing, social work, occupation, physical or respiratory therapist students who do not have a license 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 HIEMA or HDOH pursuant to the Governor’s COVID-19 outbreak Emergency Proclamations.

IDAHO

- (1) H.B. 6, Idaho Coronavirus Limited Immunity Act.

Status: Enacted (August 27, 2020). Extended by H.B. 149.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: Individuals, corporations, limited liability companies, partnerships, trusts, associations, churches or religious organizations, city, county, school district, college, university or other institutions of higher education, or other unit of local government. Excludes Idaho public health districts, the federal governments, the state (except colleges, universities, and other institutions of higher education), and foreign governments).

Conduct Covered: Civil liability.

Conduct Not Covered: Intentional torts; willful or reckless misconduct.

Effective Date(s): August 27, 2020 until July 1, 2022.

Summary: The Act provides that a person is immune from civil liability for damages or an injury resulting from exposure of an individual to coronavirus. The immunity provided is in addition to any other immunity protection that may apply in state or federal law.

Immunity will not apply to acts or omissions that constitute an intentional tort or willful or reckless misconduct as defined in section 6-1601 of the Idaho Code.

“Person” means any entity recognized in the state and shall include but not be limited to an individual, corporation, limited liability company, partnership, trust, association, church or religious organization, city, county, school district, college, university or other institution of higher education, or other unit of local government. However, “person” shall not include any Idaho public health district; the federal government or any of its agencies; the state of Idaho or any of its agencies, except colleges, universities, and other institutions of higher education; nor any foreign government or foreign jurisdiction.

ILLINOIS

- [Executive Order 2020-19, Executive Order in Response to COVID-19 \(COVID-19 Executive Order No. 17\)](#).

Status: Issued (April 1, 2020); Subsequently superseded.

Person(s) Covered: Health care facilities; health care professionals; health care volunteers.

Conduct Covered: Civil liability for any injury or death alleged to have been caused by an act or omission, which injury or death occurred at a time when a health care facility was rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.

Conduct Not Covered: Gross negligence; willful misconduct of a health care facility if 20 ILCS 3305/15 is applicable, or by willful misconduct if 20 ILCS 3305/21 is applicable.

Effective Date(s): April 1, 2020 and for the remainder of the duration of the Gubernatorial Disaster Proclamations.

Summary: Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), the Governor direct that during the pendency of the Gubernatorial Disaster Proclamations, Health Care Professionals, Health Care Facilities, and Health Care Volunteers, as defined in the Executive Order, are immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Health Care Professional, Health Care Facility, or Health Care Volunteer, which injury or death occurred at a time when a Health Care Professional, Health Care Facility,

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

or Health Care Volunteer was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.

Immunity is inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

- Executive Order 2020-37, Executive Order in Response to COVID-19 (COVID-19 Executive Order No. 35)

Status: Issued (May 13, 2020).

Person(s) Covered: Hospitals; Health Care Facilities; Health Care Professionals; Health Care Volunteers.

Conduct Covered: Civil liability for any injury or death alleged to have been caused by an act or omission, which injury or death occurred at a time when a Hospital or Health Care Professional was rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.

Conduct Not Covered: Gross negligence; willful misconduct of a health care facility if 20 ILCS 3305/15 is applicable, or by willful misconduct if 20 ILCS 3305/21 is applicable.

Effective Date(s): May 13, 2020 and re-issued in its entirety and extended through June 27, 2020 pursuant to Executive Order 2020-39 (May 29, 2020), but not extended past that date pursuant to Executive Order 2020-44 (June 26, 2020).

Summary: Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), the Governor has directed that during the pendency of the Gubernatorial Disaster Proclamations, Hospitals that continue to cancel or postpone all elective surgeries or procedures in order to respond to the COVID-19 outbreak, or Health Care Professionals providing service in such a Hospital, and Health Care Facilities or Health Care Professionals providing services in a Health Care Facility, as defined by the Executive Order, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Hospital or Health Care Professional, or relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by an act or omission by the Health Care Facility or the Health Care Professional, which injury or death occurred at a time when a Hospital or Health Care Professional or Health Care Facility or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH.

These sections of the Executive Order are inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct of such Hospital or Health Care Professional, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

Health Care Volunteers, as defined by the Executive Order, are also immune from civil liability for any injury or death alleged to have been caused by any act or omission of the Health Care Volunteer, which injury or death occurred at a time when the Health Care Volunteer was rendering assistance to the State in response to the COVID-19 outbreak by providing services, assistance, or support consistent with current guidance issued by IDPH.

This section of the Executive Order is inapplicable if it is established that such injury or death was caused by willful misconduct.

Pursuant to Executive Order 2020-39, dated May 29, 2020, Executive Order 2020-37 supersedes Executive Order 2020-19 as of its effective date, May 13, 2020.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

INDIANA

- Indiana Code 34-30-13.5, Health Care: Immunity for Persons Providing Services in a Disaster.

Status: Enacted (effective through June 30, 2020).

Person(s) Covered: Licensed health care services providers under Indiana law or the law of another state; facilities; other locations providing health care services.

Conduct Covered: Civil liability for acts or omissions.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): 2006.

Summary: Pursuant to Indiana Code 34-30-13.5-1, a person who has a license to provide health care services under Indiana law or the law of another state and who provides a health care service (A) within the scope of the person's license to another person; and (B) at a location where health care services are provided during an event that is declared as a disaster, will be immune from civil liability for an act or omission relating to the provision of health care services in response to an event declared as a disaster emergency under IC 10-14-3-12. The immunity extends regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency.

Pursuant to Indiana Code 34-30-13.5-3, a facility or other location that is providing health care services in response to an event declared as a disaster emergency will not be held liable for an act or omission relating to the provision of health care services if the person meets the qualifications of 34-30-13.5-1, and is acting during an event that is declared as a disaster emergency, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency.

Civil immunity is not extended, pursuant to Indiana Code 34-30-13.5-2, to damages resulting from the act or omission relating to the provision of health care services resulting from the person's gross negligence or willful misconduct.

- 2021 Indiana House Bill No. 1002, Civil immunity related to COVID-19.

Status: Referred to Committee on Judiciary (January 4, 2021).

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability for an act or omission relating to the provision of health care services.

Conduct Not Covered: Gross negligence or willful misconduct.

Effective Date(s): Effective as of passage, with varying enumerated effective dates.

Summary: The act would amend Section 8. IC 34-30-13.5-1 to include a Section 1(a) that provides that, accept as provided in Section 2, a person who has a license to provide health care services under Indiana law or the law of another states, who provides health care services with the scope of the person's license and at a location where health care services are provide during an event that is declared as a disaster may not be held civilly liable for an act or

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

omission relating to the provision of health care services in response to an event that is declared a disaster under IC 10-14-3-12, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency. That such Section 1(a) applies before March 1, 2020, and after March 31, 2022.

Section 1(b) applies after February 29, 2020 and before April 1, 2022, and provides that except as provided in Section 2, a person providing health care services, whether in person or through telemedicine services permitted by IC 25-1-9.5, at a facility or other location where health care services are provided in response to or during a state disaster emergency declared under IC 10-14-3-12, regardless of whether the provision of health care services occurs before or after the declaration of a state or emergency may not be held civilly liable for an act or omission relating to the provision of health care services.

Section 2., IC 34-30-13.5-2 provides that a person is not immune from civil liability if the damages resulting from the act or omission relating to the provision of the health care services resulted from the person's gross negligence or willful misconduct.

- [Guidance Concerning Liability for Healthcare Providers and Facilities, Indiana State Department of Health.](#)

Status: Issued (April 3, 2020)

Person(s) Covered: N/A

Conduct Covered: N/A

Conduct Not Covered: N/A

Effective Date(s): N/A

Summary: The Indiana State Department of Health issued guidance on Indiana Code 34-30-13.5 in the wake of the COVID-19 pandemic to confirm that facilities and individuals providing healthcare services in response to a declared disaster emergency, such as the one declared because of COVID-19, may not be held liable for care provided in response to that emergency event unless the care resulted from gross negligence or willful misconduct, stating that 34-30-13.55 sets forth the details of the immunity provided.

The guidance further confirms that liability protections from healthcare providers under Indiana Code 35-30-13.5 does not depend on employment status, meaning whether a provider is an employee or a volunteer, and that providers that did not hold licenses prior to the outbreak, but are providing healthcare services in accordance with the requirements of Indiana Executive Order 20-13, including registration with the Indiana Professional Licensing Agency, are licensed for purposes of the liability protections.

The guidance also confirms that the Indiana Code section granting immunity to facilities does not list specific facility types, but that the immunity applies to any facility that provides health care services by a professional licensed under Indiana state law or the law of another state and the provision of care is in response to and during the COVID-19 emergency declaration. "Locations" in that section would extend to non-facility locations that may be set-up in response to the COVID-19 emergency.

The guidance also confirms that the federal government has provided immunity to volunteer healthcare providers in the CARES Act.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

- [Senate Bill No. 1](#)

Status: Enacted (February 18, 2021)

Person(s) Covered: Individual, business, state or local government entity, health care provider, or nursing home in Exposure Claims; manufacturer or supplier in Products Liability Claims

Conduct Covered: Civil tort liability

Conduct Not Covered: Gross negligence or willful or wanton misconduct (including fraud and intentionally tortious acts)

Effective Date(s): Retroactively March 1, 2020 until December 31, 2024.

Summary: Provides civil tort immunity for damages arising from Covid-19 on the premises owned or operated by a person, on any premises on which the person or an employee or agent of the person provided property or services to the individual, or during an activity managed, organized, or sponsored by the person. Conduct that constitutes gross negligence, or willful or wanton misconduct (including fraud and intentionally tortious acts), are exempt from immunity.

The bill also provides civil tort immunity against products liability claims that allege harm from the design, manufacture, labeling, sale, distribution, or donation of a Covid-19 protective product. "Protective product" includes personal protective equipment, medical devices, equipment or supplies that are used to treat Covid-19, medications used to treat Covid-19, tests approved by the FDA to diagnose or determine exposure or immunity to Covid-19, any product designed clean or disinfect or prevent the spread of the virus, or any component of any item defined as protective product. Conduct that constitutes gross negligence, or willful or wanton misconduct (including fraud and intentionally tortious acts), are exempt from immunity.

The bill further prohibits class action suits arising from Covid-19 or Covid-19 protective products.

IOWA

- [Iowa Code § 135.147, Immunity for emergency aid – exceptions.](#)

Status: Enacted.

Person(s) Covered: Person; corporation; other legal entity; employee or agent or such person, corporation, or entity.

Conduct Covered: Civil liability for causing the death of or injury to a person, or for damage to property.

Conduct Not Covered: Acts or omissions constituting recklessness; an act or omission caused in whole or in part the public health disaster.

Effective Date(s): May 11, 2007.

Summary: Section 135.147 provides that a person, corporation, or other legal entity, or any employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of the

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

public health disaster will not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.

Immunity does not apply to any person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, whose act or omission caused in whole or in part the public health disaster and who would not otherwise be liable therefor.

- PPE Shortage Order, Iowa Department of Public Health.

Status: Issued (April 9, 2020)

Person(s) Covered: A health care provider, hospital, health care facility, and any other person, corporation, or other legal entity or employee of all such entities acting in compliance with the

Order. or other guidance issued by the Iowa Department of Public Health or the Centers

for Disease Control and Prevention related to optimizing PPE supply.

Conduct Covered: See Iowa Code § 135.147.

Conduct Not Covered: See Iowa Code § 135.147.

Effective Date(s): April 9, 2020 and shall continue so long as the state of public health disaster emergency remains in effect unless sooner terminated or modified by subsequent order of the Department or proclamation of the Governor.

Summary: The PPE Shortage Order notes that Iowa Code § 135.147 provides legal immunity for health care providers during a public health disaster. Specifically, § 135.147 provides immunity for persons, corporations, and other legal entities who provide medical care, in good faith, to victims of a public health disaster. The Order provides that immunity covers civil damages resulting from death, injury, or property damage. Health care providers only qualify for this immunity if acting under the direction of the IDPH during a public health disaster.

The PPE Shortage Order states that any health care provider acting in compliance with the Order, or other guidance issued by the IDPH or the Centers for Disease Control and Prevention related to PPE supply measures, is acting under the direction of the IDPH during a public health disaster and therefore will be entitled to the immunity protections of § 135.147.

(3) Senate File 2338, COVID-19-Related Liability

Status: Enacted (June 18, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Civil damages.

Conduct Not Covered: Recklessness or willful misconduct.

Effective Date(s): Retroactive application to January 1, 2020.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Summary: The amendment creates a new section of the Iowa Code 686D.1, *et seq.*, which includes civil immunity for health care providers (including professional, health care facilities, home health care facilities, or any other person or facility authorized to administer health care) for causing or contributing, directly or indirectly, to the death or injury of an individual resulting from the provider's acts or omissions in support of the state's response to COVID-19. The civil immunity applies to an injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with COVID-19; prescribing, administering, or dispensing pharmaceuticals for off-label use to treat a patient with COVID-19; or acts or omissions while providing health care to individuals unrelated to COVID-19 when care is affected by COVID-19, identifying examples.

Civil immunity does not apply to reckless or willful misconduct.

A claim for COVID-19 exposure may not be filed unless it alleges a minimum medical condition – a diagnosis of COVID-19 that requires inpatient hospitalization or results in death – unless the act was intended to cause harm or constitutes actual malice.

KANSAS

- House Bill 2016, *COVID-19 Response and Reopening for Business Liability Protection Act*.

Status: Enacted (June 9, 2020).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services.

Conduct Not Covered: Gross negligence; willful, wanton or reckless conduct; healthcare services not related to COVID-19.

Effective Date(s): Effective after publication in the Kansas register, and pursuant to Section 15(b), apply retroactively to any cause of action accruing on or after March 12, 2020 and prior to the termination of the state of disaster emergency related to the COVID-19 public health emergency declared pursuant to K.S.A. 48-924 and amendments thereto.

Summary: Section 10 of the Act provides that a healthcare provider is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decision or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any state of disaster emergency declared pursuant to K.S.A. 48-924, and amendments, related to the COVID-19 public health emergency. The provisions apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any state of disaster emergency declared pursuant to K.S.A. 48-924, and amendments, related to the COVID-19 public health emergency.

Immunity does not apply to civil liability when it is established that the act, omissions or healthcare decision constituted gross negligence or willful, wanton or reckless conduct.

Section 10 does not apply to healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

“Healthcare provider” means any person licensed or otherwise authorized by law to provide healthcare services in the state or a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by law to form such corporation who are health care providers as defined by the subsection, or an officer, employee or agent thereof, acting in the course and scope of employment or agency.

KENTUCKY

- [2020 K.Y. S.B. No. 150, An Act relating to the state of emergency in response to COVID-19 and declaring an emergency.](#)

Status: Enacted (March 30, 2020).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for ordinary negligence if exercising ordinary, reasonable, and prudent health care in good faith.

Conduct Not Covered: Anything other than ordinary negligence.

Effective Date(s): Until January 1, 2021.

Summary: During the state of emergency declared by the Governor in response to COVID-19 on March 6, 2020, by Executive Order 2020-215, a health care provider who in good faith renders care or treatment of a COVID-19 patient during the state of emergency has a civil liability defense for ordinary negligence for personal injury resulting from the care or treatment, or from any act in providing or arranging further medical treatment. The health care provider must act as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances.

The defense includes a health care provider who (1) prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus; (2) provides health care services, upon the request of health care facilities or public health entities, that are outside the provider’s professional scope of practice; or (3) utilize equipment or supplies outside of the product’s normal use for medical practice and the provision of health care services.

- (2) [2020 K.Y. S.B. 5](#)

Status: Enacted (April 11, 2021).

Person(s) Covered: Premises owners or possessors, Essential service providers

Conduct Covered: Civil liability for ordinary negligence if exercising ordinary, reasonable, and prudent health care in good faith.

Conduct Not Covered: Gross negligence, or wanton, willful, malicious, or intentional misconduct

Effective Date(s): Retroactively March 6, 2020

Summary: The act extends immunity against premises liability claims where a premises owner or possessor follows

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

any executive action to prevent the spread of COVID-19 during the declared emergency and either directly or indirectly invites or permits another person to enter the premises is not liable for corona virus related injuries suffered by business invitees during the period of the state health emergency. The bill defines premises owners as restaurants, retail shops, schools, churches, stadiums, gyms, medical facilities and long-term care facilities, among other entities. An “executive action” includes all orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency, or a local governmental agency; and Industry-specific guidelines related to a COVID-19 declared emergency. The act does not create a duty of care, relieve any person entering a premise from any obligation he or she may have to exercise care, or affect any right to workers’ compensation benefits or the exclusivity of the workers’ compensation law.

Additionally, the act provides immunity to essential service providers against “any claim or cause of action for an act or omission arising from COVID-19” during the declared emergency. Essential service providers include organizations that provide charitable and social services; individuals and businesses needed for transportation; financial institutions; mail, post, shipping, and pick-up services; individuals and businesses that produce, supply, prepare, and sell food; home-based care and services; individuals and businesses that work in the supply chain for critical medical and pharmaceutical products; Health care providers; Medicaid waiver providers; elementary and secondary schools, whether public or private; child care service providers and facilities; funeral directors, morticians, undertakers, and embalmers; local government agencies and political subdivisions; and manufacturers that produced or are producing, or that distributed or are distributing, medical, medicinal, hygienic items such as face masks and hand sanitizers, or other personal protective equipment.

The act also sets a one-year statute of limitations for any Covid-19 claim for personal injury against a premises owner/possessor or essential service provider and extends liability protection from negligence claims available to those who repurpose property for use in sheltering people during an emergency to apply regardless of whether the person provides the property “voluntarily and without compensation.”

LOUISIANA

- [LSA-R.S. 29:771\(B\)\(2\)\(c\), Miscellaneous \(Louisiana Health Emergency Powers Act\)](#).

Status: Enacted (Current through 2019 Regular Session).

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability for causing the death of, or injury to, any person.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): Current through 2019 Regular Session.

Summary: LSA-R.S. 29:771(B)(2)(c) orders that during a state of public health emergency, any health care provider^[2] is not civilly liable for causing the death of, or injury to, any person or damage to any property.

Civil immunity does not extend to gross negligence or willful misconduct.

- [LSA-R.S. 37:1731.1, Medical services during declared state of emergency: limitation of liability \(Good Samaritan Law\)](#).

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Enacted (June 30, 2008; Current through 2019 Regular Session).

Person(s) Covered: Medical personnel.

Conduct Covered: Civil damages or injury as a result of any act or omission related to the rendering of or failure to render services.

Conduct Not Covered: Gross negligence; willful and wanton misconduct.

Effective Date(s): Precipitating event requiring a declared state of emergency through the period of time set forth in the declaration of a state of emergency.

Summary: LSA-R.S. 37:173.1 provides that medical personnel who in good faith, and regardless of compensation, render or fail to render emergency care, health care services or first aid during a declared state of emergency (when the state of emergency affects the rendering of medical care), will not be liable for any civil damages or injury as a result of any act or omission related to the rendering or failure to render services.

Civil immunity does not extend to damages or injury caused by gross negligence or willful and wanton misconduct.

The definition of “declared state of emergency,” provides that the statutory provision is effective during the period of time set forth in the Governor’s declaration and shall also be retroactive to the precipitating event requiring the declaration.

- Senate Bill No. 445, LIABILITY: Provides relative to limitation of civil liability for medical personnel and healthcare providers during public health emergency.

Status: Referred to Committee on Judiciary A. (May 4, 2020)

Person(s) Covered: See R.S. 29:771(B)(2)(c) and R.S. 37:1731.1, above.

Conduct Covered: See R.S. 29:771(B)(2)(c) and R.S. 37:1731.1, above.

Conduct Not Covered: See R.S. 29:771(B)(2)(c) and R.S. 37:1731.1, above.

Effective Date(s): March 11, 2020 (retroactive).

Summary: An Act to amend and reenact R.S. 29:771(B)(2)(c) and (d) and R.S. 37:1731.1, relative to immunity from civil liability, to provide relative to certain immunity from civil liability for medical personnel and healthcare providers during public health disasters or emergencies, and to provide definitions, terms, conditions, and requirements, and to provide for related matters.

The proposed law revises when the present law is applicable and revises the definition of “during a declared state of emergency” to include R.S. 29:760 et seq. The proposed law further provides that due to the imminent threat posed by COVID-19, as provided in Proclamation Number 25 JBE 2020 and any subsequent proclamation declaring the existence of a statewide public health emergency, that the proposed law shall be retroactive to March 11, 2020.

- House Bill No. 778, EMERGENCY PREPAREDNESS: Provides for the limitation of liability during a declaration of a state of public health emergency

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Introduced into the House (Mar. 31, 2020).

Person(s) Covered: See R.S. 29:771(B)(2)(c).

Conduct Covered: See R.S. 29:771(B)(2)(c).

Conduct Not Covered: See R.S. 29:771(B)(2)(c).

Effective Date(s): During the state of public health emergency (and effective upon signature of governor or lapse of time for gubernatorial action).

Summary: An Act to amend and reenact R.S. 29:771(B)(2)(c) and (d), relative to the Louisiana Health Emergency Powers Act, to provide for a limitation on liability during a state of public health emergency, to provide for the liability of healthcare providers, to provide for the liability of private entities, and to provide for related matters.

The proposed law makes it effective only during a state of public health emergency declared, as provided in the present law.

MAINE

No Specific COVID-19 Legislation or Order.

MARYLAND

- MD Public Safety Code § 14-3A-06, Immunity.

Status: Enacted (2014).

Person(s) Covered: Health care provider.

Conduct Covered: Civil or criminal liability.

Conduct Not Covered: Other than good faith.

Effective Date(s): N/A

Summary: Health care providers are considered immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation.

- Renewal of Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19.

Status: Issued (May 6, 2020).

Person(s) Covered: N/A

Conduct Covered: N/A

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Not Covered: N/A

Effective Date(s): May 6, 2020

Summary: The Governor's proclamation provides in Section II. that health care providers who act in good faith under the declared catastrophic health emergency proclamation, including orders issued under the proclamation by the Governor and by other State officials acting at the direction of or under delegated authority from the Governor, have the immunity provided by § 14-3A-06 of the Public Safety Article of the Maryland Code.

MASSACHUSETTS

- [Senate Bill 2640. An Act to provide liability protections for health care workers and facilities during the COVID-19 pandemic.](#)

Status: Enacted (Apr. 17, 2020).

Person(s) Covered: Health care professionals; health care facilities; volunteer organizations.

Conduct Covered: Suit and civil liability for damages alleged to have been sustained by an act or omission in the arranging for or providing of health care services in good faith; Suit and civil liability for any damages occurring in or at the volunteer organization's facility.

Conduct Not Covered: Act or omission constituting gross negligence, recklessness, or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity in the providing of health care services; consumer protection actions brought by the Attorney General; false claims actions brought by or on behalf of the Commonwealth.

Effective Date(s): March 10, 2020 (declaration of COVID-19 emergency) and until terminated or rescinded.

Summary: The Act provides that health care professionals and health care facilities, as defined by the Act, are immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency, provided that they are (1) arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law; (2) arranging for or providing care or treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak or COVID-19 emergency rules; and (3) the health care facility or health care professional is arranging for or providing health care services in good faith.

Immunity is inapplicable if the damage was caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by a health care facility or health care professional providing health care services, and shall not apply to consumer protection actions brought by the Attorney General, or to false claims actions brought by or on behalf of the Commonwealth.

The Act further provides that a volunteer organization, as defined by the Act, will also be immune from suit and civil liability for any damages occurring in or at the volunteer organization's facility where the damage arises from the use of the facility for the Commonwealth's response and activities related to the COVID-19 emergency. Immunity is

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

inapplicable if it is established that the damages were caused by the volunteer organization's gross negligence, recklessness or conduct with an intent to harm.

MICHIGAN

- C.L.A. 30.411, Personnel of disaster relief forces, powers, duties, rights, privileges and immunities and compensation (Michigan Emergency Management Act).

Status: Enacted (Current through P.A. 2020, No. 84, of the 2020 Regular Session, 100th Legislature).

Person(s) Covered: A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital, whether licensed in Michigan or another state or by the federal government or a branch of the armed forces of the United States; a registered nurse, practical nurse, nursing student acting under the supervision of a licensed nurse, a dentist, a veterinarian, a pharmacist, a pharmacist intern acting under the supervision of a licensed pharmacist, and a paramedic, if licensed in Michigan or another state or by the federal government or a branch of the armed forces of the United States; a medical resident undergoing training in a licensed hospital in Michigan or another state.

Conduct Covered: Liability for injury sustained in the rendering of services during a state of disaster declared by the governor, regardless of how or under what circumstances or by what cause those injuries are sustained.

Conduct Not Covered: An act or omission that is willful or gross negligence, as defined in the Act.

Effective Date(s): N/A

Summary: M.C.L.A. 30.411(4) provides that a person that is licensed to practice medicine or osteopathic medicine and surgery, or a licensed hospital, whether licensed in Michigan or in another state, or by the federal government or a branch of the armed forces of the United States, who renders services during a state of disaster declared by the governor, and at the express or implied consent of a governmental official, is considered an authorized disaster relief worker or facility, and is not liable for an injury sustained by a person by reason of those services, regardless of how, under what circumstances, or by what cause those injuries are sustained. The same immunity extends to the following individuals: a registered nurse; a practical nurse; a nursing student acting under the supervision of a licensed nurse; a dentist; a veterinarian; a pharmacist; a pharmacist intern acting under the supervision of a licensed pharmacist; a paramedic; and a medical resident undergoing training in a licensed hospital in Michigan or another state.

Immunity is inapplicable in the event of an act or omission that is willful or gross negligence. Gross negligence is defined within the subsection (9) to mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. If a civil action for malpractice is filed alleging an act or omission that is willful or gross negligence resulting in injuries, the services rendered are to be judged according to the standards required of persons licensed in the State.

- Executive Order No. 2020-30, Temporary relief from certain restrictions and requirements governing the provision of medical services; Executive Order No. 2020-61, Temporary relief from certain restrictions and requirements governing the provision of medical services.

NOTE: Executive Orders 2020-30 and 2020-61 were deemed unconstitutional by a series of decisions issued by the Michigan Supreme Court on October 2, 2020 pursuant to *In re Certified Questions From United States Dist. Court, W. Dist. of Michigan, S. Div., No. 161492*, 2020 WL 5877599 (Mich. Oct. 2, 2020), and on October 12, 2020

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

pursuant to *House of Representatives v. Governor*, 949 N.W.2d 276 (Mich. 2020) and *In re Certified Questions from United States Dist. Court , W. Dist. of Michigan, S. Div.*, 949 N.W.2d 274 (Mich. 2020).

Status: Issued (March 30, 2020).

Person(s) Covered: Licensed health care professional or designated health care facility providing medical services in support of the state's response to the COVID-19 pandemic.

Conduct Covered: Liability for an injury sustained.

Conduct Not Covered: Gross negligence.

Effective Date(s): March 30, 2020 and superseded on April 26, 2020 by Executive Order 2020-61, Temporary relief from certain restrictions and requirements governing the provision of medical services. Executive Order 2020-100 (May 22, 2020) extends Executive Order 2020-61 and provides that it would remain in effect until the end of the state of emergency declared in Executive Order 2020-99, or at the end of any subsequently declared state of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later. Executive Order 2020-150 (July 13, 2020) rescinded the liability protections, noting that as pressure on hospitals has eased, so too as the need for the broad relief afforded in Executive Orders 2020-30 and 2020-61.

Summary: Under Executive Order 2020-30, the Governor of Michigan provided that consistent with MCL 30.411(4), any licensed health care professional or designated health care facility that provides medical services in support of the 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, under what circumstances, or by what cause those injuries are sustained.

Immunity from liability is inapplicable where it is established that injury or death was caused by the gross negligence, as defined in MCL 30.411(9), of the health care professional or designated health care facility.

- [Executive Order No. 2020-39, Temporary relief from certain restrictions and requirements governing the provision of emergency medical services](#)

NOTE: Executive Order 2020-39 was deemed unconstitutional by a series of decisions issued by the Michigan Supreme Court on October 2, 2020 pursuant to *In re Certified Questions From United States Dist. Court , W. Dist. of Michigan, S. Div.*, No. 161492, 2020 WL 5877599 (Mich. Oct. 2, 2020), and on October 12, 2020 pursuant to *House of Representatives v. Governor*, 949 N.W.2d 276 (Mich. 2020) and *In re Certified Questions from United States Dist. Court , W. Dist. of Michigan, S. Div.*, 949 N.W.2d 274 (Mich. 2020).

Status: Issued (Apr. 8, 2020).

Person(s) Covered: Emergency medical services personnel or life support agency.

Conduct Covered: Liability for an injury sustained

Conduct Not Covered: Gross negligence.

Effective Date(s): April 8, 2020 and rescinded on June 3, 2020 pursuant to Executive Order 2020-112, Rescission of certain executive orders.

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Summary: Under Executive Order 2020-39, the Governor of Michigan provided that consistent with section 11(4) of the Emergency Management Act, 1976 PA 390, as amended MCL 30.411(4), an emergency medical services personnel or life support agency that provides medical services in support of the 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.

Immunity from liability is inapplicable where it is established that injury or death was caused by the gross negligence, as defined in MCL 30.411(9) of the emergency medical services personnel or life support agency.

- Public Act 236 of 2020, Michigan House Bill 6030, COVID-19 response and reopening liability assurance act.

Status: Enacted (October 22, 2020).

Person(s) Covered: Persons, as defined by the Act.

Conduct Covered: Acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk.

Conduct Not Covered: N/A

Effective Date(s): Retroactive to March 1, 2020.

Summary: The Act provides that a person is immune from a COVID-19 claim liability related to exposure or potential exposure to COVID-19 when a person acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm.

A COVID-19 claim includes conduct intended to reduce transmission of COVID-19, such as tort claims based on testing or contract tracing, for example.

A de minimis deviation from strict compliance unrelated to the plaintiff's injuries does not deny the person the immunity.

The Act does not (a) create, recognize, or ratify a claim or cause of action of any kind; (b) eliminate a required element of any claim, including, but not limited to, causation and proximate cause elements; (c) affect rights, remedies, or protections under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, including the exclusive application of that act; (d) amend, repeal, alter, or affect any other immunity or limitation of liability; (e) create a defense to liability in an administrative proceeding or civil action brought by a state or local government prosecutor or agency to endorse state statutes and regulations, executive orders, or state agency orders, applicable to COVID-19.

"Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity, including but not limited to, a school, a college or university, an institution of higher education, and a nonprofit charitable organization. Person includes an employee, agent, or independent contractor of the person, regardless of whether the individual is paid or an unpaid volunteer.

- Public Act 240 of 2020, Michigan House Bill 6159, Pandemic Health Care Immunity Act

Status: Enacted (October 22, 2020).

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: Persons, as defined by the Act.

Conduct Covered: Injury, including death, sustained by an individual by reason of those services.

Conduct Not Covered: Willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm.

Effective Date(s): Retroactive to March 29, 2020 and before July 14, 2020.

Summary: Health care providers and health care facilities that provide health care services in support of Michigan's response to the COVID-19 pandemic are not liable for any injury, including death, sustained by an individual by reason of those services, regardless of how or under what circumstances, or by what cause, those injuries are sustained.

Immunity does not extend to the provision of services constituting willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm.

- Senate Bill No. 899, A bill to amend 1976 PA 390, entitled "Emergency management act," by amending section 11 (MCL 30.411), as amended by 2005 PA 321.

Status: Referred to Committee on Judiciary (May 7, 2020)

Person(s) Covered: A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital; health care professional; health care facility; registered nurse; practical nurse; nursing student acting under the supervision of a licensed nurse; dentist; veterinarian; pharmacist; pharmacist intern acting under the supervision of a licensed pharmacist; paramedic; medical resident undergoing training in a licensed hospital in this or another state; other licensed, registered or unlicensed health care professionals, or other health care providers, including their employers; contractors; health care facility administrators; executives; supervisors; board members, trustees, volunteers; students; trainees; or other comparable individuals or agents of health care facilities; and other individuals otherwise authorized by executive order or law of this state to provide health care services, with or without a license, during a state of emergency or a state of disaster.

Conduct Covered: Civil or criminal liability.

Conduct Not Covered: Willful or gross negligence; willful or intentional criminal misconduct; or intentional infliction of harm by the health care facility, health care professional, or other health care provider arranging for, providing, or making decisions regarding health care services.

Effective Date(s): Retroactive to March 10, 2020 and remains in effect for the duration of the COVID-19 state of emergency or state of disaster or through September 30, 2020, whichever is later.

Summary: The bill revises the state's emergency management act. A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital, health care professional or a health care facility, whether licensed in this or another state or by the federal government or a branch of the armed forces Armed Forces of the United States, or an individual listed described in subsection (6) (registered nurse; practical nurse; nursing student acting under the supervision of a licensed nurse; dentist; veterinarian; pharmacist; pharmacist intern acting under the supervision of a licensed pharmacist; paramedic; medical resident undergoing training in a licensed hospital in this or another state; other licensed, registered or unlicensed health care professionals, or other health care providers, including their employers; contractors; health care facility administrators; executives; supervisors; board members,

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

trustees, volunteers; students; trainees; or other comparable individuals or agents of health care facilities; and other individuals otherwise authorized by executive order or law of this state to provide health care services, with or without a license, during a state of emergency or a state of disaster), who renders health care services during a state of disaster declared by the governor and at the express or implied request of a state official or agency or county or local coordinator or executive body, under this act or under a state of emergency declared under 1945 PA 302, MCL 10.31 to 10.33, in support of this state's response to the state of disaster declared under the act or under a state of emergency declared under 1945 PA 302, MCL 10.31 to 10.33, is considered an authorized disaster relief worker or facility and is not liable, for an injury sustained by a person by reason of those services, civilly or criminally, for any harm or damages sustained or alleged to have been sustained as a result of any act or omission occurring in the course of arranging for, providing, or making decisions regarding health care services regardless of how or under what circumstances or by what cause those injuries are sustained. The immunity granted under this section extends to a health care professional's or health care facility's reliance on a patient's advanced directive witnessed by health care facility employees, provided that those employees were not directly involved in the patient's care prior to witnessing the patient's advanced directive.

Immunity does not apply in the event of an act or omission that is willful or gross negligence, constitutes willful or intentional criminal misconduct, or constitutes intentional infliction of harm by the health care facility, health care professional, or other health care provider arranging for, providing, or making decisions regarding health care services.

Acts, omissions, or decisions impacting any patient, employee, agent, family member, volunteer, visitor, business partner, or other individual resulting in whole or in part from a shortage of personal protective equipment, resources, medical equipment, or staffing is not considered to be willful or gross negligence, willful or intentional criminal misconduct, or an intentional infliction of harm.

"Health care facility" means (i) a health facility or agency described by statute; (ii) state-owned surgical centers; (iii) state-operated outpatient facilities; (iv) state-operated veterans facilities; (v) facilities used as surge capacity for any of the health care facilities described in this subdivision.

"Health care professional" means an individual who is otherwise authorized to provide health care services during a state of emergency or state of disaster.

"Health care provider" means an individual who is otherwise authorized to provide health care services during a state of emergency or state of disaster.

"Health care services" mean services provided by a health care facility, health care professional, or other health care provider regardless of the location where those services are provided, including the provision of health care services via telehealth or other remote method.

MINNESOTA

No Specific COVID-19 Legislation or Order.

MISSISSIPPI

- [Executive Order No. 1471](#).

Status: Issued (April 10, 2020).

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: Healthcare professional; healthcare facility.

Conduct Covered: Suit for civil liability for any injury or death alleged to have been sustained because of acts or omissions while providing health care services.

Conduct Not Covered: Acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct, or would otherwise constitute a false claim under federal law.

Effective Date(s): April 10, 2020 and extended pursuant to Executive Order 1497, dated June 12, 2020, until 11:59 p.m. on July 1, 2020, unless it is modified, amended, or superseded.

Summary: The Executive Order, pursuant to the Mississippi Emergency Management Act, provides that any Healthcare Professional or Healthcare Facility, as defined in the Executive Order, is immune from suit for civil liability for any injury or death alleged to have been sustained because of the Healthcare Professional or Facility's acts or omissions while providing healthcare services, including but not limited to screening, assessing, diagnosing, and treating patients for COVID-19, or otherwise acting in support of the State's COVID-19 response. Acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic that render the Healthcare Professional or Facility unable to provide the level or manner of care that would otherwise be required are included in the immunity.

Immunity does not extend to acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct, or would otherwise constitute a false claim pursuant to 31 U.S.C. §3729 *et seq.*

"Healthcare Facility" includes hospitals, clinics, nursing homes, mental health centers, and field hospitals, and any other facilities designated for temporary use for the purpose of providing healthcare services in support of the State's COVID-19 response. "Healthcare Professional" includes any individual licensed, registered, permitted, or certified in any state, whether paid or unpaid, who is providing health care services in response to the COVID-19 outbreak at a Healthcare Facility, or working for the State in response to its 2020 Disaster Proclamation.

(2) [S.B. 3049, Mississippi Back-to-Business Liability Assurance Act and Healthcare Emergency Response Liability Protection Act.](#)

Status: Enacted (July 8, 2020).

Person(s) Covered: Healthcare professional; healthcare facility.

Conduct Covered: Civil liability.

Conduct Not Covered: Clear and convincing evidence of actual malice or willful, intentional misconduct.

Effective Date(s): Applies retroactively to March 14, 2020, during the state of emergency, during any period of renewal or extension, and terminates one year after the end of the COVID-19 state of emergency.

Summary: The Act provides, in relevant part, that health care professionals and facilities are immune from any lawsuit alleging an injury or death directly or indirectly sustained because of acts or omissions when providing health care services related to a COVID-19 state of emergency. The provision includes a nonexclusive list of a broad range of health care services that support that state's response to the COVID-19 state of emergency covered by the immunity, including delaying or cancelling non-urgent or elective surgical procedures or using equipment or supplies outside of their normal use.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Immunity does not apply where a plaintiff shows, by clear and convincing evidence, that a defendant acted with actual malice or willful, intentional misconduct.

A person bringing a claim alleging injury arising from COVID-19 within two years of accrual. The statute of limitations does not apply to claims against a government entity, which are governed by the Mississippi Tort Claims Act. Any civil liability arising out of acts or omissions that occurred during the operation of the act are subject to its provisions in perpetuity.

MISSOURI

(1) [2021 Missouri Senate Bill No. 51.](#)

Status: Introduced (January 6, 2021).

Person(s) Covered: Health care providers.

Conduct Covered: Civil medical liability actions.

Conduct Not Covered: Gross negligence or willful misconduct, and that the alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged gross negligence or willful misconduct, by clear and convincing evidence.

Effective Date(s): [As of passage of the Act.](#)

Summary: The act seeks to amend chapter 537, RSMo, by adding nine new sections relating to civil actions, with an emergency clause. A newly enacted 537.1010, RSMo provides that no health care provider will be liable in a COVID-19 medical liability action unless the plaintiff can prove by clear and convincing evidence: (1) gross negligence or willful misconduct by the health care provider; and (2) that the alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged gross negligence or willful misconduct.

Acts, omissions, or decisions resulting from a resource or staffing shortage will not be considered gross negligence or willful misconduct.

A COVID-19 medical liability action is defined as a civil action brought by a person who suffered personal injury, or a representative of a person who suffered personal injury; brought against a health care provider; and alleging any harm, damage, breach, or tort resulting in the personal injury alleged to have been caused by, arising out of, or related to a health care provider's act or omission in the course of arranging for or providing COVID-19 related health care services that occurred on or after December 1, 2019 and before the later of October 1, 2024 or the date on which there is no state of emergency declared by proclamation of the governor or by resolution of the general assembly pursuant to chapter 44 that is in effect with respect to COVID-19.

A COVID-19 medical liability action shall not be commenced in any court of the state later than one year after the date of the alleged harm, damage, breach, or tort unless tolled for proof of fraud, intentional concealment, or the presence of a foreign body which has no therapeutic or diagnostic purpose or effect in the person of the injured person.

(2) [Senate Bill No. 1](#)

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Introduced (November 13, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Civil damages or administrative sanctions for any failure, in the delivery or nondelivery of health care necessitated by an emergency.

Conduct Not Covered: Malicious misconduct or conduct intentionally causing damage.

Effective Date(s): On or after effective date of the Act, and also shall apply to all claims described in the section based on acts or omissions occurring during the state of emergency.

Summary: The act seeks to repeal section 44.045, RSmo, and to enact in lieu thereof a new section 44.045.1. which provides that any health care provider who provides care as necessitated by an emergency, including care necessitated by mutual aid agreements between political subdivisions and other public and private entities under section 44.090, will not be liable for civil damages or administrative sanctions for any failure, in the delivery or nondelivery of health care necessitated by the emergency, to exercise the skill and learning of an ordinarily careful health care provider in similar circumstances.

Immunity does not extend to damages, including exemplary and damages for aggravating circumstances, when a person has sustained serious injury as a result of malicious misconduct or conduct that intentionally caused damage to the plaintiff for acts or omissions in rendering such care. Evidence of negligence, including but not limited to, indifference to or conscious disregard for the safety of others will not constitute malicious misconduct or intentional misconduct. "Serious injury" means a positive diagnosis of an injury or illness resulting in medical treatment and inpatient hospitalization; permanent impairment of a bodily function; or death.

"Health care provider" includes, in part, any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility, dentist, registered or licensed practical nurse, psychologist, physician-in-training, and any person authorized to provide consumer directed services, personal care assistance services, or home-based care, and includes the respective employers or agents of any such person or entity. It further includes any other person or entity that provides health care services under the authority of a license or certificate, and the employers or agents of any such person or entity; and any person, health care system, or other entity that takes measures to coordinate, arrange for, provide, verify, respond to, or address issues related to the delivery of health care services.

The provisions apply to all civil actions filed on or after the effective date of the act, and will apply to all claims described in the section based on acts or omissions occurring during the state of emergency.

MONTANA

(1) Senate Bill 65.

Status: Enacted (February 11, 2021).

Person(s) Covered: Property owners, health care providers, manufacturers and suppliers

Conduct Covered: Civil actions alleging injury, death, property damage (products liability claims only)

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Not Covered: Gross negligence, willful and wanton misconduct, or an intentional tort.

Effective Date(s): February 11, 2021 until January 1, 2031

Summary: The bill protects against premises liability related Covid-19 claims, health care liability Covid-19 claims, product liability related Covid-19 claims. The bill also creates an affirmative defense claim for a person following any federal or state statute, regulation, order, or public health guidance related to COVID-19 applicable to the person or activity at issue. The bill additionally limits new causes of actions based on any government order, regulation, or public health guidance related to Covid-19.

In a premises liability claim, any property owner, tenant, or other person otherwise in control of a premise cannot be found liable for any civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises.

Health care providers are also immune from actions alleging civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the response to Covid-19. This encompasses: injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19; prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of Covid-19; acts or omissions while providing health care to individuals with a condition unrelated to Covid-19 when those acts or omissions support the response to Covid-19 such as, delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance; diagnosing or treating patients outside the normal scope of the health care provider's license or practice; using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use; conducting tests or providing treatment to an individual outside the premises of a health care facility; acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to Covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of Covid-19; or acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment. Exempt is any act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to Covid-19 is not liable in a civil action caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product. "Qualified product" is defined in the bill to include: (a) personal protective equipment and supplies used to treat or prevent the spread of COVID-19; (b) medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat Covid-19 or to prevent its spread; (c) medical devices, equipment, and supplies used outside of their normal use to treat or prevent the spread of COVID-19; (d) medications used to treat COVID-19, including medications prescribed or dispensed for off-label use attempt to treat Covid-19; (e) tests to diagnose or determine immunity to COVID-19; and (f) a component of these items. Immunity is also afforded in claims alleging failure to provide proper instructions or sufficient warnings.

NEBRASKA

(CONTINUED)

NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

No Specific COVID-19 Legislation or Order.

NEVADA

(1) Nevada Revised Statute § 414.110, Immunity and exemption.

Status: Enacted.

Person(s) Covered: State and political subdivisions thereof; other agencies of the State and subdivisions thereof; workers.

Conduct Covered: Liability for the death of or injury to persons and damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith.

Effective Date(s): April 1, 2020 until modified or terminated by a subsequent directives.

Summary: The statute provides that all functions and other activities relating to emergency management are government functions and that the State, its political subdivisions, other agencies of the State, and political subdivisions thereof will be liable for death of or injury to persons, or to damage to property, as a result of any such activity.

Immunity does not extend to willful misconduct, gross negligence, or bad faith, as relates to workers.

“Worker” includes, without limitation, any full-time or part-time paid, volunteer or auxiliary employee of the State, of any political subdivision thereof, of other states, territories, possessions or the District of Columbia, the Federal Government, of any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing services for emergency management at any place in the State subject to the other or control of, or pursuant to a request of, the State Government or any political subdivision thereof.

(2) Nevada Declaration of Emergency Directive 011.

Status: Issued (April 1, 2020).

Person(s) Covered: All providers of medical services.

Conduct Covered: See Nev. Rev. Stat. § 414.110.

Conduct Not Covered: See Nev. Rev. Stat. § 414.110.

Effective Date(s): N/A.

Summary: The Directive provides that all providers of medical services related to COVID-19 are performing services for emergency management subject to the order or control of and at the request of State Government and shall be afforded the immunities and protections set forth in Nev. Rev. Stat. § 414.110., subject to the same exclusions therein. provides that all providers of medical services in the State of Nevada are authorized to practice outside the scope of their specialization, within the limits of their competency, to the extent necessary to augment and bolster Nevada’s healthcare system during the COVID-19 crisis.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

NEW HAMPSHIRE

No Specific COVID-19 Legislation or Order.

NEW JERSEY

- [J.S.A. 26:13-19, Immunity from liability and applicable definitions.](#)

Status: Enacted (Current with laws through L.2020, c.17).

Person(s) Covered: A person or private entity (including a health care provider) and the employees of the entity.

Conduct Covered: Liability for injury caused by an act or omission in connection with a public health emergency, or preparatory activities.

Conduct Not Covered: Conduct outside the scope of the authority granted by the act; conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct; acts or omissions that caused or contributed to the public health emergency.

Effective Date(s): September 14, 2005.

Summary: N.J.S.A. 26:13-19(c)(2) provides that a person or private entity, and the employees of the entity, will not be liable for an injury caused by an act or omission in connection with a public health emergency, or preparatory activities, provided that the action is undertaken pursuant to the exercise of the authority provided under the act.

Immunity is inapplicable for an injury that results from an act that is outside the scope of the authority granted by the act or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct.

“Private entity,” as used in subsection (c), includes but is not limited to a health care provider.

- [Executive Order No. 122.](#)

Status: Issued (April 1, 2020).

Person(s) Covered: Individuals practicing a healthcare profession or occupation; individuals granted temporary authority to practice a healthcare profession or occupation; healthcare facilities; modular field treatment facilities; any other site designated by the Commissioner of the Department of Health for temporary use for the purpose of providing essential services.

Conduct Covered: Civil liability for any damages alleged to have been sustained as a result of the individual's acts or omissions undertaken in good faith while providing health care services or services in support of the State's COVID-19 response.

Conduct Not Covered: Acts or omissions constituting a crime, actual fraud, actual malice, gross negligence or willful misconduct.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Effective Date(s): At any time during the State of Emergency (retroactively applied).

Summary: The Executive Order extends the immunity granted in N.J.S.A. 26:13-19 to healthcare providers and provides immunity from civil liability for individuals practicing a healthcare profession or occupation in New Jersey, individuals granted temporary authority to practice a healthcare profession or occupation in New Jersey, healthcare facilities, modular field treatment facilities, any other site designated by the Commissioner of the Department of Health for temporary use. Immunity for civil liability is available for the purpose of providing essential services for any damages alleged to have been sustained as a result of an act or omission undertaken in good faith in the course of providing healthcare services or services in support of the State's COVID-19 response, whether or not within the scope of their practice and whether or not immunity is otherwise available under current law.

Immunity from civil liability is inapplicable to the extent that acts or omissions constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

"Healthcare facility" has the meaning provided by N.J.S.A. 26:13-2, which includes institutions, buildings or agencies operated and designed to provide health services, medical or dental treatment or nursing, rehabilitative, or preventative care to any person, and as more fully set forth in the definition.

- [2020 NJ Senate Bill No. 2333, Provides civil and criminal immunity to certain health care professionals and health care facilities during public health emergency and state of emergency; facilitates issuance of certain temporary licenses and certifications during public health emergency.](#)

Status: Passed Assembly (Both Houses) (April 13, 2020).

Person(s) Covered: Health care professional; health care facility or health care system that owns or operates more than one health care facility.

Conduct Covered: Civil damages for injury or death alleged to have been sustained as a result of an act or omission undertaken in good faith. As to a health care facility or a health care system that owns or operates more than one health care facility, criminal or civil liability for damages for injury or death alleged to have been sustained as a result of an act or omission in connection with allocation of mechanical ventilators or other scarce medical resources, subject to allocation plans.

Conduct Not Covered: Acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct.

Effective Date(s): March 9, 2020 (retroactive).

Summary: Under subsections (1)(c) and (d) of the Act, as adopted, a health care professional, a health care facility, or a health care system that owns or operates more than one health care facility would not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission in the course of providing medical services in support of the State's response to the outbreak of coronavirus disease during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020.

Immunity would also include any act or omission undertaken in good faith by a health care professional or healthcare facility or health care system to support efforts to treat COVID-19 patients and to prevent the spread of COVID-19 during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020, including but not limited to engaging in telemedicine or telehealth, and diagnosing or treating patients outside the normal

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

scope of the health care professional's license or practice. The immunity granted pursuant to this provision would not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct, and shall be retroactive to March 9, 2020.

The Act provides that a health care facility or a health care system that owns or operates more than one health care facility would not be criminally or civilly liable for damages for injury or death alleged to have been sustained as a result of an act or omission by the facility or system or one or more of the facility's or system's agents, officers, employees, servants, representatives or volunteers during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 in connection with the allocation of mechanical ventilators or other scarce medical resources, if the health care facility or system adopts and adheres to a scarce critical resource allocation policy that at a minimum incorporates the core principles identified by the Commissioner of Health in an executive directive or administrative order, and the health care facility's or system's agents, officers, employees, servants, representatives and volunteers would not be civilly or criminally liable for an injury caused by any act or omission pursuant to the bill during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 pursuant to, and consistent with, such policy.

NEW MEXICO

No Specific COVID-19 Legislation or Order

NEW YORK

- [Executive Order 202: Declaring a Disaster Emergency in the State of New York \(Mar. 7, 2020\); Executive Order 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency \(March 23, 2020\).](#)

Status: Issued (March 23, 2020).

Conduct Covered: Civil liability for injury or death alleged to have been sustained directly as a result of an act or omission by person(s) covered.

Person(s) Covered: Physicians, physician assistants; specialist assistants; nurse practitioners; licensed registered professional nurses; licensed practical nurses.

Conduct Not Covered: Gross negligence.

Effective Date(s): March 23, 2020 – April 22, 2020.

Summary: Executive Order 202.10 provides in part that Subdivision (2) of section 6527, Section 6545, and Subdivision (1) of Section 6909 of the Education Law are modified and/or suspended to the extent necessary to provide that all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses are immune from civil liability 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. Immunity does not extend to medical professionals where it is established that such injury or death was caused by the gross negligence of the medical professional. As such, there is no immunity from suit.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Per Executive Order 202.5 and 202.10, the list of medical professionals authorized to provide medical services in New York State continues to grow, including but not limited to those authorized to practice in the United States but not licensed in the State of New York.

- Emergency or Disaster Treatment Protection Act, N.Y. Public Health Law, Article 30-D, §§ 3080 *et seq.*

Status: Repealed. See below.

Person(s) Covered: Health care facilities; health care professionals; volunteer organizations (all as defined by statute and by COVID-19 emergency rules).

Conduct Covered: Civil or criminal liability for harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care service in good faith.

Conduct Not Covered: Willful or intentional criminal misconduct; gross negligence; reckless misconduct, or intentional infliction of harm by the health care facility or health care professional, which do not include (for health care professionals or facilities) acts, omissions or decisions resulting from resource or staffing shortages.

Effective Date(s): March 7, 2020 (retroactive to Executive Order 202) to the expiration date of the COVID-19 emergency declaration.

Summary: Pursuant to the newly enacted Article 30-D of New York's Public Health Law, New York is providing broad-sweeping immunity from civil or criminal liability for harm or damages sustained as a result of COVID-19. Pursuant to Article 30-D, any health care facility or health care professional, as defined, will have immunity from civil or criminal liability for any harm or damage, as defined, alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services, as defined, so long as (a) the health care facility or professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule, as defined, or otherwise in accordance with applicable law, (b) the act or omission occurs in the course of providing health care services and treatment of individual is impacted by the health care facility or professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and (c) the health care facility or professional is arranging for or providing health care services in good faith.

Additionally, volunteer organizations, as defined, are immune from civil or criminal liability for harm or damages irrespective of the cause of the harm or damage occurring in or at its facility or facilities arising from the state's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule.

The immunity for health care professionals, facilities, and volunteer organizations will not apply if the harm or damage is caused by an act or omission constituting willful or intentional criminal conduct, gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or professional providing health care services or by the volunteer organization. However, acts, omissions or decisions of health care professionals or facilities resulting from resource or staffing shortages are not considered willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

- Senate Bill No. S8835, An Act to amend the public health law, in relation to amending provisions regarding health care facilities and professionals during the COVID-19 emergency.

Status: Enacted (August 3, 2020).

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Person(s) Covered: Health care facilities; health care professionals; volunteer organizations (all as defined by statute and by COVID-19 emergency rules).

Conduct Covered: Civil or criminal liability for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care service in good faith to an individual

Conduct Not Covered: Willful or intentional criminal misconduct; gross negligence; reckless misconduct, or intentional infliction of harm by the health care facility or health care professional, which do not include (for health care professionals or facilities) acts, omissions or decisions resulting from resource or staffing shortages.

Effective Date(s): August 3, 2020.

Summary: The Act amends the Emergency or Disaster Treatment Protection Act, N.Y. Public Health Law, Article 30-D, §§ 3080 *et seq.* Section 1 of the Act amends the definition of “health care services” that are eligible for immunity in the Emergency or Disaster Treatment Protection Act by removing “prevention” of COVID-19 from the definition of health care services. The Act clarifies that the immunity applies to the assessment or care of an individual as it relates to COVID-19, and removes the care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency declaration from the definition of “health care services.” The purpose is to narrow the scope of the liability protections, applying only when a health care facility or medical professional is providing direct care related to the diagnosis or treatment of COVID-19 and the care is impacted by COVID-19.

Section 2 of the Act removes from immunity, protections when a health care facility or health care professional is “arranging for” health care services.

Section 3 of the Act provides the effective date of “immediately” and applies to claims for harm or damages if the act or omission that causes such harm or damage occurred on or after the effective date, provided however that the act will not apply to any act or omission occurring after the expiration of the COVID-19 emergency declaration.

- [Senate Bill S1577, An Act to repeal Article 30-D of the Public Health Law Relating to Emergency or Disaster Protection Act.](#)

Status: Enacted (April 6, 2021)

Person(s) Covered: N/A

Conduct Covered: N/A

Conduct Not Covered: N/A

Effective Date(s): Immediately upon passage.

Summary: Senate Bill 5177 repeals Article 30-D of the Public Health Law, also known as the Emergency or Disaster Treatment Protection Act, which provided immunity to health care facilities, health care professionals, and volunteer organizations, including nursing home administrators and executives. The bill repeals Article 30-D on the grounds that it uses severe liability standards as a means to insulate health care facilities, and specifically, administrators and executives of such facilities, from any civil or criminal liability for negligence, including nursing homes, who have seen nearly five thousand deaths since early May 2020. The enactment of Bill 5177 now potentially exposes health care

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

facilities to lawsuits for deaths during the early days of the outbreak. However, the bill does not include language to retroactively erase the immunity provisions that have been in place for the past year, but does strip any immunity from March 7, 2020, when the broad legal protections for nursing homes became effective, and April 3, 2020, when the law was enacted.

NORTH CAROLINA

- C. Gen. Stat. § 166A-19.60, Immunity and Exemption (North Carolina Emergency Management Act).

Status: Enacted.

Person(s) Covered: State; political subdivision of the State; emergency management workers; or firm, partnership, association, or corporation complying with or reasonably attempting to comply with the North Carolina Emergency Management Act.

Conduct Covered: Liability for the death of or injury to persons, or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith.

Effective Date(s): October 1, 2012.

Summary: N.C. Gen. Stat. § 166A-19.60(a) of the North Carolina Emergency Management Act provides that the State, any political subdivision of the State, other agencies of the State or political subdivision thereof, and emergency management workers, firms, partnerships, associations, or corporations who comply with, or reasonably attempt to comply with the North Carolina Emergency Management Act, or any order, rule or regulation promulgated pursuant to its provisions, or pursuant to any ordinance relating to emergency management measures enacted by a political subdivision of the State, will not liable for the death of, or injury to, persons or for damage to property, as a result of any such activity.

Immunity does not extend to emergency management workers, firms, partnerships, associations, or corporations in cases of willful misconduct, gross negligence, or bad faith. Under subsection (b), the immunity provided to firms, partnerships, associations, or corporations is subject to additional restrictions.

“Emergency management worker” is defined in subsection (e) to include any full or part-time paid, volunteer, or auxiliary employee of the state, other states, territories or possessions, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, or any agency or organization performing emergency management services at any place in the State, subject to the order or control of or pursuant to the request of the State government or any political subdivision thereof. “Emergency management worker” also includes any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by State agency and any person performing health care services under N.C. Gen. Stat. § 90-12.2.

- Executive Order No. 130, Meeting North Carolina’s Health and Human Services Needs.

Status: Issued (April 8, 2020).

Person(s) Covered: Emergency management workers (as defined by N.C. Gen. Stat. § 166A-19.60(e)) and as further designated in Executive Order.

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Conduct Covered: See N.C. Gen. Stat. § 166A-19.60 and as further designated for those rendering aid in North Carolina pursuant to the Emergency Management Assistance Company.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith.

Effective Date(s): N/A.

Summary: Executive Order No. 130 provides that all persons who are licensed or otherwise authorized under the Executive Order to perform professional skills in the field of health care are requested to provide emergency services to respond to the COVID-19 pandemic and, to the extent they provide emergency services, constitute “emergency management workers” to the maximum extent allowed by N.C. Gen. Stat. § 166A-19.60(e).

Immunity does not extend in cases of willful misconduct, gross negligence, or bad faith.

Executive Order No. 130 further designates that pursuant to N.C. Gen. Stat. § 166A-46, officers and employees and emergency management workers as defined in N.C. Gen. Stat. § 166A-19.60(e) are considered agents of the State for tort liability and immunity purposes in utilization of the Emergency Management Assistance Compact (“EMAC”).^[3] Immunity from liability for any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used in connection with an attempt to render aid shall be extended to officers, employees or emergency management workers rendering aid in North Carolina pursuant to EMAC.

Immunity does not extend for those rendering aid in North Carolina pursuant to EMAC in cases of willful misconduct, gross negligence, or bad faith.

- [Senate Bill 704, An Act to Provide Aid to North Carolinians in Response to the Coronavirus Disease 2019 \(COVID-19\) Crisis \(Emergency or Disaster Treatment Protection Act\)](#).

Status: Enacted (May 4, 2020).

Person(s) Covered: Health care facility; health care provider; entity arranging for or providing health care services during COVID-19 emergency declaration; volunteer organization.

Conduct Covered: Civil liability for any harm or damages alleged to have been sustained as an act or omission.

Conduct Not Covered: Gross negligence; reckless misconduct; intentional infliction of harm.

Effective Date(s): March 10, 2020 (retroactive to Executive Order No. 116), and any subsequent time period during which a state of emergency is declared to be in effect during calendar year 2020 by the Governor in response to COVID-19.

Summary: Senate Bill 704 creates Article 1L. of Chapter 90 of the General Statutes, entitled the Emergency or Disaster Treatment Protection Act, § 90-21.130, *et seq.* Section 90-21.133 provides that any health care facility, health care provider, or entity that has legal responsibility for the acts or omissions of a health care provider will have immunity from any civil liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services subject to three requirements. First, the health care facility, provider, or entity must be arranging for or providing health care services during the period of the COVID-19 emergency, and including but not limited to the arrangement or provision of those services pursuant to a COVID-19 emergency rule. Second, the arrangement or provision of health care services must be impacted, directly or indirectly (1) by a health

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care facility, provider, or entity's decisions or activities in response to or as a result of the COVID-19 pandemic, or (2) by the decisions or activities, in response to or as a result of the COVID-19 pandemic, of a health care facility or entity where a health care provider provides health care services. And third, the health care facility, provider, or entity must also be arranging for or providing health care services in good faith.

Volunteer organizations are also immune from civil liability for any harm or damages occurring in or at their facilities arising from the State's response and activities under the COVID-19 emergency declaration and in accordance with any COVID-19 emergency rule.

Immunity will not apply if the harm or damages were caused by an act or omission constituting gross negligence, reckless misconduct, or intentional infliction of harm. As to health care facilities, providers, or entities that have legal responsibility for the acts or omissions of a health care provider, the acts, omissions, or decisions resulting from a resource or staffing shortage will not be considered to be gross negligence, reckless misconduct, or intentional infliction of harm.

NORTH DAKOTA

- [North Dakota House Bill 1175](#)

Status: Enacted (April 23, 2021).

Person(s) Covered: Premise owners or possessors, health care providers and facilities, product manufacturers and distributors, any person facing a Covid-19 exposure claim.

Conduct Covered: Civil action alleging exposure or potential exposure to Covid-19.

Conduct Not Covered: An act intended to cause harm or an act that constitutes actual malice.

Effective Date(s): Retroactively from January 1, 2020.

Summary: North Dakota's HB 1175 provides a safe harbor from civil liability for an act or omission resulting in damage or injury sustained from exposure or potential exposure to COVID-19 if the act or omission was in substantial compliance or was consistent with a federal or state statute, regulation, or order related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

Premise owners or possessors are immune from civil liability from civil liability for any act or omission resulting in damage or injury sustained from the individual's exposure to COVID-19, unless the person (1) exposes the individual with actual malice; or (2) intentionally exposes the individual with the intent to cause harm.

Health care providers and facilities are also immune from civil liability for any act or omission in response to Covid-19 that causes or contributes, directly or indirectly, to the death or injury of an individual. This includes injury or death resulting from screening, assessing, diagnosing, caring for, triaging, or treating an individual with a suspected or confirmed case of Covid-19 or from prescribing, administering, or dispensing a pharmaceutical to treat or prevent a suspected or confirmed case of Covid-19. Immunity to health care providers and facilities does not extend to willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

The bill also protects against products liability claims against a person that designs, manufactures, labels, sells,

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to Covid-19. However, this immunity does not apply if the person had (1) actual knowledge of a defect in the product; and (2) the person recklessly disregarded a substantial and unnecessary risk the product would cause serious personal injury, death, or serious property damage; or (3) the person acted with actual malice.

OHIO

- 2019 Ohio House Bill No. 606. To grant civil immunity to a person who provides services for essential businesses and operations for injury, death, or loss that was caused by the transmission of COVID-19 during the period of emergency declared by Executive Order 2020-01D, issued on March 9, 2020.

Status: Enacted (September 14, 2020).

Person(s) Covered: Health care provider.

Conduct Covered: Civil tort liability for any injury, death, or loss to person or property.

Conduct Not Covered: Actions outside the skills, education, and training of the health care provider not taken in good faith and not taken in response to a lack of resources; reckless disregard for the consequences so as to affect the life or health of the patient; intentional misconduct or willful or wanton misconduct .

Effective Date(s): Date of Governor's Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19, through September 30, 2021.

Summary: The bill provides that a health care provider that provides health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, as a result of or in response to a disaster or emergency is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises from (a) an act or omission of a health care provider in the health care provider's provision, withholding, or withdrawal of those services; (b) any decision related to the provision, withholding, or withdrawal of those services; (c) compliance with an executive order or director's order issued during and in response to the disaster or emergency.

Immunity does not apply in a tort action if the health care provider's action, omission, decision, or compliance constitutes a reckless disregard for the consequences so as to affect the life or health of the patient or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.

A health care provider is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises because the provider was unable to treat, diagnose, or test the person for any illness, disease, or condition, including the inability to perform any elective procedure, due to an executive or director's order or an order of a board of health of a city or general health district issued in relation to an epidemic or pandemic disease or other public health emergency.

The section does not grant an immunity from tort or other civil liability to a health care provider for actions that are outside the skills, education, and training of the health care provider, unless the health care provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.

"Health care provider" means a health care professional, health care worker, direct support professional, behavioral

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

health provider, or emergency medical technician or a home health agency, hospice care program, home and community-based services provider, or facility, including any agent, board member, committee member, employee, employer, officer, or volunteer of the agency, program, provider, or facility acting in the course of the agent's, board member's, committee member's, employee's, employer's, officer's, or volunteer's service or employment.

OKLAHOMA

(1) [2020 House Bill 300, COVID-19 Public Health Emergency Limited Liability Act.](#)

Status: Enacted (May 13, 2020).

Person(s) Covered: Health care facility; health care provider.

Conduct Covered: Civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19.

Conduct Not Covered: Gross negligence; willful or wanton misconduct.

Effective Dates: As of the effective date of the Act and until October 31, 2020, or until such time as the Governor affirmatively concludes the emergency declarations specified in the Act, whichever is later.

Summary: The COVID-19 Public Health Emergency Limited Liability Act creates a new section of the Oklahoma Statutes, Section 6404, Title 63. The Act provides that health care facilities and health care providers are immune from civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission during the COVID-19 public health emergency. The act or omission must occur in the course of arranging for or providing COVID-19 health care services for the treatment of the person. The person must also be impacted by the decisions, activities or staffing of, or the availability or capacity of space or equipment by, the health care facility or provider in response to or as a result of the COVID-19 public health emergency. The Act does not grant immunity for any act or omission in the provision of health care services to a person who did not have a suspected or confirmed diagnosis of COVID-19 at the time of services.

Immunity is inapplicable where the act or omission was the result of gross negligence or willful or wanton misconduct.

OREGON

No Specific COVID-19 Legislation or Order.

PENNSYLVANIA

- [Order of the Governor of the Commonwealth of Pennsylvania to Enhance Protections for Health Care Professionals.](#)

Status: Issued (May 6, 2020).

Person(s) Covered: Licensed health care professionals; individuals of health care facilities, alternate care sites, community-based testing sites, and non-congregate care facilities.

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Conduct Covered: Civil liability for death of or injury to a person or for loss or damage to property.

Conduct Not Covered: Willful misconduct; gross negligence.

Effective Dates: Effective May 6, 2020 and for the duration of the disaster emergency.

Summary: The Executive Order designates licensed health care professionals, health care facilities, alternate care sites, community-based testing sites, and non-congregate care facilities, as further described in the Executive Order, as agents of the Commonwealth solely and exclusively for the purpose of immunity from civil liability due to emergency services activities or disaster services activities related to the Commonwealth's COVID-19 disaster emergency response.

Individuals, and not the facilities or entities themselves, will be immune from civil liability from the death of or injury to a person or for loss of or damage to property as a result of the emergency services activity or disaster services activity described in the act. The grant of immunity does not extend to health care professionals rendering non-COVID-19 medical and health treatment or services.

Immunity does not apply in cases of willful misconduct or gross negligence.

- [House Bill 2384/Senate Bill 1161.](#)

Status: Referred to Committee on Judiciary (April 6, 2020).

Person(s) Covered: Person.

Conduct Covered: Civil and criminal liability.

Conduct Not Covered: Actual harm.

Effective Dates: Upon execution of the bill.

Summary: The bill would amend Title 42 of the Pennsylvania Consolidated Statutes to add a section 8340.4. Protected business operations, which would provide immunity to a person from civil and criminal liability and from imposition of administrative sanction, including any liability or sanction imposed by a professional or occupational licensing board or commission, for engaging in a protected business operation.

Immunity from liability does not extend to liability arising from, or an imposition based on, the person causing actual harm.

“Actual harm” is defined as a documented injury or illness that is directly and proximately caused by the interaction with the person or the agents of the person.

“Protected business operation” is defined as, during a declared disaster emergency made under 35 Pa.C.S. § 7301(c) or after an order is issued under the act of April 23, 1956, known as the Disease Prevention and Control Law of 1955, (1) conducting a business transaction or (2) keeping a physical business location open.

- [House Bill No. 2546.](#)

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

Status: Referred to Committee on State Government (May 26, 2020).

Person(s) Covered: Person; covered provider.

Conduct Covered: Civil liability.

Conduct Not Covered: Reckless or intentional misconduct; intentional or grossly negligent acts or omissions.

Effective Dates: Immediately.

Summary: The bill proposes an amendment to The Administrative Code of 1929 to add a new article, Article XXI-D COVID-19 Good Samaritan Emergency Liability Waiver, to grant immunity for an act or omission made in response to the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency.

Section 2102-D of the Article provides that a person is not subject to civil liability arising from the use, nature or condition of equipment or other goods manufactured, modified, produced for or utilized, including an atypical or novel utilization, by a health care facility or health care practitioner.

Immunity will not apply to an injury or death to a person that results from an act or omission of the person constituting recklessness or intentional misconduct.

Section 2103-D of the Article provides that a covered provider, as defined by the Article, that is involved with or provides medical care will not be subject to civil or criminal liability as a result of an act or omission by the covered provider.

Immunity will not extend to an act or omission intentionally designed to harm or a grossly negligent act or omission which results in harm to an individual receiving medical care.

- [Senate Bill No. 1181.](#)

Status: Referred to Judiciary (June 4, 2020).

Person(s) Covered: Health care practitioners; health care providers; volunteer practitioners.

Conduct Covered: Medical professional liability claim, medical liability action or other civil claim of negligence.

Conduct Not Covered: Claims or causes of action that merely coincide in time with the state of disaster emergency declared by the Governor when the act or omission giving rise to the claim or cause of action is not associated with the response to the state of disaster emergency; criminal actions; intentional torts; incidents of gross negligence.

Effective Dates: Immediately.

Summary: The bill proposes that after a declaration of disaster emergency declared by the Governor under 35 Pa.C.S. § 7301(c) and during the period of the state of disaster emergency, that the following will be immune from a medical professional liability claim, medical liability action or other civil claim of negligence for any act or omission in the course of rendering health care during the state of disaster emergency: (1) a health care practitioner or health care provider that provides health care services for or through a health care facility or a Federal, State or municipal governmental agency and provides the health care services in a manner that is outside or exceeds the normal scope of the health care

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

practice or specialty of the health care practitioner or health care provider; (2) a volunteer practitioner that returns to the practice of medicine in response to the state of disaster emergency; (3) a health care practitioner or health care provider, acting in compliance with an executive order or guidelines issued by a Federal, State or municipal government in relation to the state of disaster emergency, that cancels, discontinues or otherwise alters the health care services provided by the health care practitioner or health care provider; (4) a health care practitioner or health care provider, acting in good faith, that engages in an action or omission which results in an injury to another because the health care practitioner or health care provider is unable to provide the required level or manner of care due to a lack of resources attributable to the state of disaster emergency.

Immunity will not apply to a claim or cause of action that merely coincides in time with the state of disaster emergency declared by the Governor when the act or omission giving rise to the claim or cause of action is not associated with the response to the state of disaster emergency. Immunity also will not apply to any criminal action, intentional tort or incident of gross negligence.

- Senate Bill No. 1194, COVID-19 Exposure Liability Act.

Status: Referred to Judiciary (June 16, 2020).

Person(s) Covered: Persons.

Conduct Covered: Civil liability.

Conduct Not Covered: Gross negligence.

Effective Dates: Immediately and to expire two years after the COVID-19 disaster declaration is terminated or expires under 35 Pa.C.S. §7301.

Summary: The bill proposes that a person that attempts, in good faith, to adhere to the COVID-19 emergency declaration, the Governor's 20200319 TWW COVID-19 Business Closure Order or any other executive order relating to COVID-19, or any guidance issued by the Department of Health or the Secretary of Health relating thereto, will not be liable for damages, injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course or performance of, or provision of business services.

Immunity does not apply where there is clear and convincing evidence of gross negligence.

Causes of action alleging injury resulting from exposure to COVID-19 must be brought not later than one year after the date the cause of action accrues. Any civil liability arising out of an act or omission or related to an injury that occurred during the operation of this act shall be subject to the provisions of the act in perpetuity.

RHODE ISLAND

- RI Gen. Laws 30-15-15, Immunity from liability – Compensation for death or injury of disaster response workers (Rhode Island Emergency Management Act).

Status: Enacted (Current through Chapter 20-6 of the 2020 2nd Regular Session).

Person(s) Covered: State; political subdivision of the State; agencies of the State or political subdivisions thereof;

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NATIONAL SURVEY OF COVID-19 MEDICAL MALPRACTICE IMMUNITY LEGISLATION (AS OF MAY 24, 2021)

disaster response workers.

Conduct Covered: Liability for the death of, or injury to, persons, or for damage to property.

Conduct Not Covered: Willful misconduct; gross negligence; bad faith. (Except as to State, any political subdivision of the State, and any other agencies of the State or political subdivision thereof.)

Effective Date(s): 1973

Summary: RI Gen. Laws § 30-15-15(a) of the Rhode Island Emergency Management Act provides that all functions of the chapter are declared to be governmental functions. Subsection (a) further provides that the State, any political subdivision of the State, other agencies of the State or political subdivision thereof, and disaster response workers who comply with, or reasonably attempt to comply with the Rhode Island Emergency Management Act, or any order, rule or regulation promulgated pursuant to its provisions, or pursuant to any ordinance relating to precautionary measures enacted by a political subdivision of the State, will not liable for the death of, or injury to, persons or for damage to property, as a result of disaster response activities.

Immunity does not extend to disaster response workers in cases of willful misconduct, gross negligence, or bad faith.

“Disaster response worker,” pursuant to subsection (d), means any full- or part-time paid, volunteer, or auxiliary employee of the state, other states, territories or possessions, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, or any agency or organization, or any private person, firm, or corporation performing disaster response activities at any place in the State subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof.

- [Executive Order 20-21, Eighteenth Supplemental Emergency Declaration – Increasing Hospital and Nursing Facility Capacity, Extending Statutory Immunity.](#)

Status: Issued (April 10, 2020).

Person(s) Covered: Disaster response workers pursuant to R.I. Gen Laws § 30-15-15(a) and as amended/affirmed by Executive Order 20-21.

Conduct Covered: See R.I. Gen Laws § 30-15-15(a).

Conduct Not Covered: See R.I. Gen Laws § 30-15-15(a); negligence that occurs in the course of providing patient care to patients without COVID-19 whose care has not been altered by the existence of the disaster emergency.

Effective Date(s): Immediately and shall remain in full force and effect until May 8, 2020, unless renewed, modified or terminated by subsequent Executive Order.

Summary: Executive Order 20-21 provides that all persons and organizations subject to the Order, including health care facilities, health care workers, health care workers providing community-based health care, services at surge hospitals and services at existing hospitals, nursing facilities and alternative nursing care sites as deemed and/or affirmed to be “disaster response workers” entitled to immunity under R.I. Gen. Laws § 30-15-15(a).

In addition to conduct not covered pursuant to R.I. Gen Laws § 30-15-15(a), the Executive Order excludes immunity for negligence that occurs in the course of providing patient care to patients without COVID-19 whose care has not been

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altered by the existence of this disaster emergency.

SOUTH CAROLINA

(1) [Senate Bill 147, Covid-19 Liability Safe Harbor Act](#)

Status: Enacted (April 28, 2021).

Person(s) Covered: Health care providers, manufactures and suppliers, businesses, and government entities.

Conduct Covered: Any acts or omissions resulting in a coronavirus claim.

Conduct Not Covered: Gross negligence, reckless, willful, or intentional misconduct; or a failure to make any attempt to adhere to public health guidance.

Effective Date(s): Causes of action that arise between March 13, 2020, and June 30, 2021, or 180 days after the final state of emergency is lifted for COVID-19, whichever is later.

Summary: South Carolina's Covid-19 Liability Safe Harbor Act provides immunity for claims alleging Covid-19 exposure. The act extends immunity to premises of a covered entity and operations, products, or services provided on-premises or off-premises for a covered entity. Additionally, health care providers are immune from liability for acts or omissions stemming from the prescription or dispense of medicines for off-label use to attempt to combat coronavirus; health care services related to the coronavirus that are outside of a provider's professional scope of practice; or the use of equipment or supplies to combat or treat the coronavirus in a manner outside of the equipment's or supplies' normal use in medical practice or in the provision of health care services. Protection also applies to the manufacturing or donating of precautionary equipment or supplies, including personal protective equipment, due to shortages that occurred during the pandemic.

The act does not preclude an insured's claim against an insurer's business interruption insurance policy.

SOUTH DAKOTA

(1) [House Bill 1046, An Act to Limit Liability for Certain Exposures to Covid-19](#)

Status: Enacted (February 17, 2021).

Person(s) Covered: Health care providers, manufactures and suppliers, Any person in control of any premises

Conduct Covered: Liability for exposure, illness, injury, death or damages.

Conduct Not Covered: Intentional acts related to exposure claims. Gross negligence, recklessness, or willful misconduct related to medical liability and products liability claims.

Effective Date(s): Effective January 1, 2020 through December 31, 2022.

Summary: The bill provides protection against exposure claims unless the claimant can prove exposure resulted from

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intent to transmit the coronavirus and a positive Covid-19 diagnosis. A claimant must prove all elements of intentional exposure with intent to transmit Covid-19 by clear and convincing evidence. Likewise, Covid-19 premises liability claims are barred unless the claimant can prove the person inviting the claimant to the property had the intent to transmit the virus.

The bill also affirms that health care providers are not liable for any acts or omissions in response to Covid-19. Civil damages constituting gross negligence, recklessness, or willful misconduct are excluded from protection.

Products liability claims are also immune. Any action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of a disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 is barred unless the claimant can prove gross negligence, recklessness, or willful misconduct. The same applies to claims alleging insufficient instructions or failure to warn. The bill defines “qualified product” to include: personal protective equipment used to protect the wearer from Covid-19 or to prevent the spread of Covid-19; medical devices, equipment, and supplies used to treat Covid-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat Covid-19 or to prevent the spread of Covid-19; medical devices, equipment, and supplies used outside of their normal use to treat Covid-19 or to prevent the spread of Covid-19; medications used to treat Covid-19, including medications prescribed or dispensed for off-label use to attempt to treat Covid-19; tests to diagnose or determine immunity to COVID-19; or any component of the items listed. Protection does not apply to gross negligence, recklessness, or willful misconduct.

TENNESSEE

(1) [Executive Order 53, An Order Regarding Limited Liability Protection for Health Care Providers in Response to COVID-19.](#)

Status: Enacted (August 17, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Liability for illness, injury, death or damages.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): Effective from July 2, 2020 through August 17, 2020, when it was rescinded.

Summary: The Executive Order provides that in accordance with Tennessee Code Annotated, Section 58-2-107(l), health care providers who render services within the limits of their license, certification, or authorization are granted limited liability protection and will not be liable for any illness, injury, death, or damages related to the contraction of, or suspected contraction of, COVID-19 alleged to have been caused by acts or omissions within the limits of the provider’s license, certification, registration, or authorization, including acts or omissions resulting from a lack of resources attributable to or arising out of the provider’s response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.

The protections do not include any act or omission caused by gross negligence or willful misconduct.

(2) Tenn. Code Ann. § 29-34-802, Claims arising from COVID-19, [Tennessee COVID-19 Recovery Act.](#)

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Status: Enacted (August 17, 2020).

Person(s) Covered: Persons.

Conduct Covered: Liability for loss, damage, injury, or death.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): August 17, 2020, and applies to all claims arising from COVID-19, except those which, on or before August 3, 2020, (a) filed a complaint or civil warrant; (b) filed a notice of claim with the Tennessee claims commission; or (c) notice was satisfied under the laws pertaining to healthcare liability claims. until repeal on July 1, 2020, but continues to apply to any injury occurring before that date to which none of the exceptions apply.

Summary: The bill enacts the Tennessee COVID-19 Recovery Act and makes other additions to present law. The Act provides that an individual or legal entity ("person") will not be liable for loss, damage, injury, or death (collectively referred to as an "injury") that arises from COVID-19.

Immunity will not extend to a claimant unless the claimant provides by clear and convincing evidence that the person caused the injury by an act or omission constituting gross negligence or willful misconduct. The Act requires that a claimant in an action alleging injury arising from COVID-19 must meet specific pleading requirements from which a trier could reasonably conclude that the injury was caused by the defendant's gross negligence or willful misconduct, including a certificate of good faith stating that the claimant or claimant's counsel has consulted with a physician duly licensed to practice in the state or a contiguous bordering state, and that the physician has provided a written statement confirming a signed, written medical opinion has been obtained which states that the physician believes the alleged loss, damage, injury or death was caused by an alleged act or omission of the defendant or defendants.

The Act does not create a cause of action, eliminate a required element of any existing cause of action, affect workers' compensation claims, or amend, repeal, alter, or affect any immunity or limitation of liability available under current law or contract.

(3) Senate Bill 8011.

Status: Sent to General Subcommittee of Senate Judiciary Committee (August 12, 2020).

Person(s) Covered: N/A.

Conduct Covered: N/A.

Conduct Not Covered: N/A

Effective Date(s): Upon becoming law for healthcare liability actions for which notice is given on or after that date.

Summary: The Act would amend the Tennessee Code, Title 8; Title 9; Title 20; Title 28; Title 29, and Title 49 relative to civil liability. Tennessee Code Annotated, Section 29-26-121(a)(2) on written notices of claims would be amended to add a new subdivision which provides that if a claim for healthcare liability is based on a claim of exposure to or contraction of coronavirus, notice of a claim must include the date and location on which the person alleges the exposure or contraction occurred.

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The Act would be effective as of the date of passage and apply to notice given on or after that date.

TEXAS

No Specific COVID-19 Legislation or Order.

UTAH

- [Senate Bill No. 3002, Emergency Health Care Access and Immunity Amendments.](#)

Status: Enacted (Apr. 22, 2020).

Person(s) Covered: Health care providers.

Conduct Covered: Civil liability for acts or omissions in the course of providing health care during a declared major public health emergency.

Conduct Not Covered: Gross negligence; intentional misconduct; malicious misconduct.

Effective Date(s): April 22, 2020.

Summary: Senate Bill No. 3002 creates a new section 2.7 of the Health Care Providers Immunity from Liability Act, § 58-13-1 *et seq.* and a new section 106 of the Utah Right to Try Act, § 58-85-101 *et seq.* Section 58-13-2.7 provides that as used in the section, “declared major public health emergency” means the same as that term is defined in § 58-85-106.

Section 58-85-106 provides that a health care provider is immune from civil liability for any harm resulting from any act or omission in the course of providing health care during a declared major public health emergency if the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared public health emergency, or if the act or omission was the direct result of providing health care to a patient for the illness or condition that resulted in the declared major public health emergency. Immunity applies even if the health care provider has a duty to respond or an expectation of payment or remuneration, and is in addition to any immunity protections that may apply under state or federal law.

Immunity is inapplicable to the acts or omissions of the health care provider that are grossly negligent or intentional or malicious misconduct.

Section 58-85-106 further provides that it is not a breach of the applicable standard of care for a health care provider to provide health care that is not within the provider’s education, training, or experience if it is within the applicable scope of practice for the type of license issued, the health care is provided in good faith, or there is an urgent shortage of health care providers as a direct result of the declared major public health emergency. Such immunity does not extend to health care that is grossly negligent or intentional or malicious misconduct.

Section 58-85-106 also provides qualified immunity from civil liability, criminal liability, or sanctions against the health care provider’s license in certain respects.

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“Health care provider” means the same as defined in § 78B-3-403, which includes various health care professionals and health care facilities.

“Declared major public health emergency” means a state of emergency declared by the governor under Section 53-2a-206 as the result of a major public health emergency.

VERMONT

- [20 V.S.A. §20. Immunities and Defenses.](#)

Status: Enacted (current through acts 1 – 92 and 94 – 99 of the Adjourned Session of the 2019-2020 Vermont General Assembly (2020)).

Person(s) Covered: The state, any of its agencies, state employees as defined in 3 V.S.A. § 1101, political subdivisions, local emergency planning committees, or individual, partnership, association, or corporations involved in emergency management activities; Any individual, partnership, association, corporation or facility that provides personnel, training or equipment through an agreement with the local emergency planning committee, the state emergency response commission or local emergency response officials.

Conduct Covered: Liability for death of or injury to persons or loss or damage to property.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): N/A

Summary: Section 20 of Vermont’s emergency management act provides immunity from liability for the death of or any injury to persons or loss or damage to property resulting from an emergency management service or response activity, as defined by the Act. Any individual, partnership, association, corporation or facility that provides personnel, training or equipment through an agreement with the local emergency planning committee, the state emergency response commission or local emergency response officials is also immune to the same extent.

- [Addendum 9 to Executive Order 01-20, Extension of State of Emergency Declared March 13, 2020: Other COVID-19 Related Directives and Clarifications.](#)

Status: Issued (April 10, 2020).

Person(s) Covered: Health care facilities, health care providers, and health care volunteers, as defined by the Executive Order.

Conduct Covered: Civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, as further enumerated by 20 V.S.A. §20.

Conduct Not Covered: Willful misconduct or gross negligence.

Effective Date(s): April 10, 2020 until June 15, 2020 pursuant to Addendum 14 to Executive Order 01-20.

Summary: Addendum 9 to Executive Order 01-20 extends civil immunity protections under 20 V.S.A. §20 to specifically

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enumerated health care facilities, health care providers, and health care volunteers in engaging in emergency management service or response activity, all as further defined by the Executive order.

Immunity does not extend in instances of willful misconduct or gross negligence.

“Health Care Facilities” means State licensed nursing homes (as defined in 33 V.S.A. § 7102(7)) and Middlesex Therapeutic Community Residence, all State licensed assisted living residences (as defined in 33 V.S.A. § 7102(1)), Level III residential care homes (33 V.S.A. 7102(10)(A)), intermediate care facilities for individuals with intellectual disability (ICF/ID) (42 C.F.R. § 440.150), all State therapeutic community residences (as defined in 33 V.S.A. § 7102 (11)), Level IV residential care homes (33 V.S.A. § 7102 (10)(B)), all hospitals (as defined in 18 V.S.A. § 1902) and all alternate or temporary hospital sites and other isolation, quarantine or housing sites designated by the Commissioner of PSD/VEM for the treatment of, or alternate shelter for those who have been exposed to or infected with COVID-19.

“Health Care Providers” means all health care providers as defined by 18 V.S.A. § 9432(9), including volunteers, who are providing health care services in response to the COVID-19 outbreak and are authorized to do so.

“Health Care Volunteers” means 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.

VIRGINIA

- Code § 8.01-225.01, Certain immunity for health care providers during disasters under specific circumstances.

Status: Enacted (Current through the End of 2019 Reg. Session and include 2020 Regular Session cc. 1, 64, 198, 201, 202, 247, 249, 255, 278, 356, 478, 603 & 620).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for any injury or wrongful death arising from abandonment of duty to provide health care.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): July 1, 2014.

Summary: Section 8.01-225.01(A) of the Virginia Code provides that any health care provider who responds to a disaster by delivering health care to persons injured in such disaster will be immune from civil liability for any injury or wrongful death arising from abandonment by the health care provider of any person to whom the health care provider owes a duty of care when (i) a state or local emergency has been or subsequently is declared, and (ii) the provider was unable to provide the requisite health care to the person to whom he owed a duty of care as a result of the provider’s voluntary or mandatory response to the disaster.

Immunity from liability does not extend to health care providers who commit gross negligence or willful misconduct.

“Health care provider” means those professions defined in Va. Code § 8.01-581.1, and includes persons, corporations,

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facilities, or institutions licensed to provide health care or professional services in the Commonwealth.

- Code § 8.01-225.02, Certain liability protections for health care providers during disasters.

Status: Enacted (Current through the End of 2019 Reg. Session and include 2020 Regular Session cc. 1, 64, 198, 201, 202, 247, 249, 255, 278, 356, 478, 603 & 620).

Person(s) Covered: Health care provider.

Conduct Covered: Civil liability for any injury or wrongful death arising from delivery or withholding of health care.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): July 1, 2008.

Summary: Section 8.01-225.02(A) of the Virginia Code provides that any health care provider who responds to a disaster will be immune from liability for any injury or wrongful death arising from the delivery or withholding of health care when (i) a state or local emergency has been or subsequently is declared, and (ii) the 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 and which resulted in the injury or wrongful death at issue.

Immunity from liability does not extend to health care providers who commit gross negligence or willful misconduct.

“Health care provider” means those professions defined in Va. Code § 8.01-581.1, and includes persons, corporations, facilities, or institutions licensed to provide health care or professional services in the Commonwealth.

“Disaster” means any “disaster,” “emergency,” or “major disaster” as those terms are used and defined in Va. Code § 44.146.16.

- Code § 8.01-225.03, Certain immunity for certain hospices, home care organizations, private providers, assisted living facilities, and adult day care centers during a disaster under specific circumstances.

Status: Enacted (October 13, 2020).

Person(s) Covered: Hospices, home care organizations, private providers, assisted living facilities, adult day care centers.

Conduct Covered: Injury or wrongful death of a patient, resident or person receiving services arising from the delivery or withholding of care.

Conduct Not Covered: Gross negligence; willful misconduct.

Effective Date(s): Applicable to causes of action arising between March 12, 2020 and until such time as the declaration of a state of emergency related to the COVID-19 virus set forth in Executive order 51 (2020) is no longer in effect.

Summary: The newly enacted section provides that any (i) hospice licensed pursuant to § 32.1-162.3, (ii) home care organization licensed pursuant to § 32.1-162.9, (iii) private provider licensed by the Department of Behavioral Health

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and Developmental Services pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, (iv) assisted living facility licensed pursuant to § 63.2-1701, or (v) adult day care center licensed pursuant to § 63.2-1701 that delivers care to or withholds care from a patient, resident, or person receiving services who is diagnosed as being or is believed to be infected with the COVID-19 virus will not be liable for any injury or wrongful death of a patient, resident, or person receiving services arising from the delivery or withholding of care when the emergency and subsequent conditions caused by the emergency result in a lack of resources, attributable to the disaster, that render such hospice, home care organization, private provider licensed by the Department of Behavioral Health and Developmental Services, assisted living facility, or adult day care center unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and that resulted in the injury or wrongful death at issue.

Immunity will be in addition to, and not in lieu of, any immunities provided by state or federal law.

Immunity does not include gross negligence or willful misconduct.

- [Executive Order 60. Clarification of Certain Immunity from Liability for Healthcare Providers in Response to Novel Coronavirus \(COVID-19\).](#)

Status: Issued (April 28, 2020).

Person(s) Covered: See Va. Code §§ 8.01-225.01 and 8.01-225.02, above.

Conduct Covered: See Va. Code §§ 8.01-225.01 and 8.01-225.02, above.

Conduct Not Covered: See Va. Code Sections 8.01-225.01 and 8.01-225.02, above.

Effective Date(s): Until the expiration of Executive Order 51 unless sooner amended or rescinded.

Summary: Executive Order 60 declares COVID-19 as a “communicable disease of public health threat” as defined in Va. Code § 44.146.16, which constitutes a “disaster.”

The Executive Order further declares that “responds to a disaster,” as that phrase is used in § 8.01-225.01(A), is to include the temporary 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.

The Executive Order also declares that “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,” as that phrase is used in § 8.01-225.02(A), is to include but is not limited to: (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.

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The Executive Order does not affect the right or ability to claim immunity from liability for any cause of action under any other federal or state law, regulation, rule or order or any theory of common law immunity.

WASHINGTON

- [Senate Bill 5271](#)

Status: Enacted (May 10, 2021).

Person(s) Covered: Health care providers.

Conduct Covered: N/A. This act permits additional proofs to be considered related to the standard of care for determining the liability of health care providers and facilities.

Conduct Not Covered: N/A.

Effective Date(s): Retroactive to February 29, 2020 and ends upon termination of the state of emergency.

Summary: Washington's Senate Bill 5271 provides liability protections to providers and facilities by amending the necessary elements of proof of injury during the Covid-19 pandemic. The bill provides a method for determining the standard of care during the state of emergency in response to the pandemic. The current standard of care is the level and types of care of a reasonably sensible practitioner possessing the degree of skill, care and learning possessed by other members of the same profession. However, the bill permits consideration of whether the act or omission was in good faith based upon federal, state, or local government guidance, direction, or recommendations in response to the pandemic that are applicable to the health care provider; or whether the act or omissions was due to a lack of resources including, but not limited to, available facility capacity, staff, and supplies, directly attributable to the pandemic.

WEST VIRGINIA

- [B. 277, COVID-19 Jobs Protection Act.](#)

Status: Enacted (March 19, 2021).

Person(s) Covered: Health care providers, Businesses, Manufactures/Suppliers, Individuals

Conduct Covered: Loss, damage, physical injury, or death arising from COVID-19.

Conduct Not Covered: Intentional conduct with actual malice. In product liability claims, actual knowledge with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk.

Effective Date(s): Retroactively to any cause of action accusing on or after January 1, 2020.

Summary: S.B. 277 protects businesses, health care providers and individuals from being sued because of the Coronavirus pandemic. The bill's protection extends to claims alleging injuries from exposure to COVID-19; medical care provided to treat COVID-19 or delaying or modifying medical procedures; collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information, among other activities.

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Additionally, any person that designs, makes, sells, or donates a (1) qualified product or (2) household cleaning supplies or personal protective equipment in response to COVID-19 that does not make such products in the ordinary course of the person's business is not liable for any personal injury, death, or property damage caused by the product's manufacturing or design, or a failure to provide sufficient warnings. However, this product liability protection does not apply if a person had actual knowledge of a defect; and acted with acted with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others; or acted with actual malice. The statute of limitations for Covid-19 product liability claims is one year.

The bill defines "qualified product" to include personal protective equipment, medical devices, equipment, and supplies used to treat Covid-19, prevent the spread of Covid-19, test, diagnose, or determine immunity to Covid-19, and their components.

In work related injuries, worker's compensation benefits are the sole and exclusive remedy for any injury, disease, or death caused by Covid-19.

WISCONSIN

- WI St. 895.4801. Immunity for health care providers during COVID-19 emergency (2019 Wis. Act. 185 § 98).

Status: Enacted (April 15, 2020).

Person(s) Covered: Health care professionals; health care providers; the employees, agents, or contractors of a health care professional or health care provider

Conduct Covered: Civil liability for the death of or injury to any individual or any damages caused by actions or omissions, subject to certain additional requirements.

Conduct Not Covered: Reckless or wanton conduct; intentional misconduct.

Effective Date(s): March 12, 2020 (retroactive to Executive Order 72) until 60 days following the date that the state of emergency terminates.

Summary: WI St. 895.4801, 2019 Wis. Act. 185 § 98, provides civil immunity for health care professionals, health care providers, and the employees, agents, or contractors of health care professionals and health care providers for the death of injury to any individual or any damages caused by actions or omissions, that satisfy the following requirements: (a) the action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020 or the 60 days following the date that the state of emergency terminates; (b) the actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following: (1) any direction, guidance, recommendation, or other statement made by a federal, state or local official to address or in response to the emergency, or disaster declared as described under paragraph (a); (2) any guidance published by the department of health services, the federal department of health and human services, or any subdivision or agencies of the federal department of health and human services relied upon in good faith.

Immunity is inapplicable under (2)(c) where the actions or omissions involve reckless or wanton conduct or intentional misconduct.

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The section does not apply if WI St. 257.03 (Volunteer practitioners indemnified), 257.04 (Health care facilities indemnified), 323.41 (Liability of state or local unit of government), or 323.44 (Public shelters) applies.

“Health care professional” means an individual licensed, registered or certified by the medical examining board under subch. II of ch. 448 of the board of nursing under ch. 441.

“Health care provider” has the meaning given in s. 146.38(1)(b) and includes an adult family home, as defined in s. 50.01(1).

- [WI Senate Bill 1.](#)

Status: Enacted (February 25, 2021).

Person(s) Covered: Businesses, government entities, schools, nonprofit organizations, and any agents of same

Conduct Covered: Civil liability for death, injury, or damage caused by an act or omission

Conduct Not Covered: Reckless or wanton conduct; intentional misconduct.

Effective Date(s): March 1, 2020, but does not apply to any action not filed prior to the bill’s enactment.

Summary: The bill provides protection for Covid-19 exposure claims. The bill protects entities from civil liability for the death of or injury to any individual or damages caused by an act or omission resulting in or relating to exposure, directly or indirectly, Covid-19 in the course of or through the performance or provision of the entity’s functions or services. The bill defines “entity” as a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization. It also affords protection of any employer or business owner, employee, agent, or independent contractor of the entity.

The bill does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.

WYOMING

- [Bill SF 1002.](#)

Status: Enacted (May 20, 2020).

Person(s) Covered: Health care provider (including retired or inactive), or other person; business entities.

Conduct Covered: Any liability.

Conduct Not Covered: Gross negligence; willful or wanton misconduct.

Effective Date(s): Immediately upon completion of all acts necessary for a bill to become a law.

Summary: The bill amended W.S. 35-4-114, Immunity from liability, to include business entities to those parties immune from liability. The amended W.S. 35-4-114 provides that during a public health emergency, as defined by W.S. 35-4-115(a)(i), any health care provider or other person, including a business entity, who in good faith follows the

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instructions of a state, city, town or county health officer or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith. The immunity also applies to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency as defined by W.S. 35-4-115(a)(i).

The immunity does not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

[1] This survey will be updated periodically to include additional legislation/executive orders addressing immunity for COVID-19 lawsuits.

[2] “Health care provider” under this provision is **not** limited “to only those medical personnel rendering emergency assistance voluntarily due to the emergency in the area.” *Lejeune v. Steck*, 138 So. 3d 1280, 1283 13-1017 (La. App. 5 Cir. 2014), *writ denied sub nom. Daigle v. Steck*, 149 So. 3d 800 (La. 2014).

[3] For information regarding the Emergency Management Assistance Compact, see summary above at Federal, (3).

TAGGED: Medical Malpractice, COVID-19, State Legislation, Medical Malpractice Immunity