

Civil Liability Protections Needed for Healthcare Workers and Institutions

- The coronavirus pandemic has highlighted our country's critical shortage of tests, critical care equipment, protective gear and medical professionals. Nevertheless, healthcare workers are risking their own safety due to the lack of testing and appropriate personal protective equipment (PPE).
- The pandemic also is stretching the facilities that care for our elderly. To be very clear, just as surely as hospitals and their teams of doctors, nurses, and caregivers are the front line for stopping this virus, so too are the skilled nursing and senior housing providers. These two sectors house over 3.5M of our nation's most vulnerable population. These providers are not only working tirelessly to create safe working and caregiving environments, but they are also being asked to go beyond their normal functions, including, for example, being tapped by States to accept or keep infected patients that require less intensive treatment to free up hospital beds for the critically ill. Moreover, the national shortage of PPE, coupled with the shortage of testing for professionals, exposes these facilities to a heightened risk of inadvertently infecting others, through no fault of their own.
- Unfortunately, instead of supporting providers' heroic efforts, the plaintiff's bar is already positioning itself to profit from this tragic situation by organizing individual and mass tort actions. For example, one plaintiff's law firm is already advertising its ability to bring **suits against healthcare workers and health care institutions** for coronavirus transmissions.
- The shortage of PPE and testing and the attendant extraordinary level of additional costs as facilities seek to address shortages has stretched all providers to the economic breaking point. The forming tsunami of litigation threatens to push the senior care sector past that point, through defense and claims costs. Simply put, absent reasonable liability protections, unchecked litigation will force providers out of business, in turn placing further pressure on state Medicaid budgets and limiting access for services for seniors.
- Given the overwhelming and nationwide impact of the pandemic, the shortage of PPE and testing, the lack of scientific certainty about treatments and methods of transmission, and the fact that senior care providers are being forced to step outside of their intended scopes, these and other frontline health care workers and institutions should not be held liable for the spread of COVID-19 or care directly impacted by the crisis, unless due to reckless misconduct or flagrant indifference.
- This protection should be extended to all senior care facilities, including skilled nursing and rehabilitation centers, assisted living and dementia care facilities, and home health care agencies.
- The States have already recognized this need. New York recently enacted legislation providing liability protections for hospitals, nursing homes, and their health care professionals and workers. Governors in Michigan, Connecticut, New Jersey, Illinois, and Arizona have issued EOs with similar scopes.
- However, this is a national crisis, and a patchwork of State solutions (or sometimes none at all) results in inconsistency and confusion, in turn deterring additional help and creating a snowball effect of increasing financial and human costs. Congress must act to provide consistency in this area.
- Congress already took a step in this direction - Section 3215 of the CARES Act provided limited liability protections for volunteer health professionals during the pandemic. **That same reasonable, limited liability should be extended to all our front line health care professionals and health care institutions, including those that serve our seniors.**