



## COVID-19 Pandemic State Government Activity

*Below is a summary of activities undertaken or announced by State Executives, Departments of Insurance, and Legislatures relating to the COVID-19 pandemic that may be of special interest to Medical Professional Liability (MPL) Association members and their insureds:*

State	Summary		
	<i>Executive Orders</i>	<i>Statutes/Bills</i>	<i>Insurance Dept. Issuances</i>
AR	<p><a href="#"><u>E.O. 20-18</u></a> provides civil liability immunity to emergency responders 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 or the implementation of measures to control the causes of the COVID-19 epidemic. Immunity will be provided to responders who are employed by a state or federal government entity, a private entity, or a non-profit entity. Emergency responders will <u>not</u> receive immunity if they engage in acts or omissions that cause injury or death while acting outside the scope of their practice (excluding cross training) or engaging in gross negligence, willful misconduct, or bad faith. The term, <i>emergency responder</i>, includes physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses, for the purposes of this order. [We are working on confirming which entities (i.e., facilities) are immune from civil liability.] The order suspends statutory limits on working hours for the aforementioned medical professionals to allow healthcare facilities affected by the disaster emergency to maintain adequate staffing and otherwise respond to the COVID-19 outbreak. The order also suspends AR code to allow emergency medical treatment protocol development or modification to occur solely with the approval of the Secretary of the Arkansas Department of Health.</p>		
AZ	<p><a href="#"><u>E.O. 2020-27</u></a> provides civil liability immunity to Arizona health professionals, volunteer health professionals, Arizona Emergency Medical Care Technicians, Arizona healthcare institutions, modular field treatment facilities, and any other approved temporary medical sites for any acts or omissions undertaken in good faith while providing healthcare services in support of the State's public health emergency declaration for COVID-19. The civil liability immunity provided by this order also applies to triage decisions made in the course of providing medical services based on good faith reliance of mandatory or voluntary state-approved protocols under the public health declaration for COVID-19. Civil liability immunity for healthcare facilities applies to the acts or omissions undertaken in good faith by one or more of their agents, officers, employees, representatives, or volunteers while providing healthcare services in support of the State's public health emergency declaration for COVID-19.</p>		
CA	<p><a href="#"><u>Government Code §8659</u></a> provides civil liability immunity to medical professionals (whether licensed in this state or any other state) and medical facilities who render services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of</p>		

any responsible state or local official or agency, regardless of how or under what circumstances or by what cause those injuries are sustained. Exception for a willful act or omission.

**Bulletin 2020-3** orders property and casualty (P/C) insurers, including medical professional liability (MPL) insurers, to make an initial premium refund for the months of March and April to all adversely impacted California policyholders no later than 120 days after this bulletin is issued. Insurers have flexibility in determining how best to issue refunds, including providing a premium credit, premium reduction, and premium refund. A premium refund doesn't require prior approval from the DOI if an insurer follows certain outlined methods, such as using an average percentage based on estimated change in risk exposure. Insurers have 60 days to submit a report to DOI documenting compliance. This bulletin follows a previous **notice** in which the DOI requested that insurers grant their insureds a 60-day grace period to make premium payments.

CT

**E.O. No. 7U** provides civil liability immunity to healthcare professionals and facilities for any injury or death alleged to have been sustained because of the individual's or facility's acts or omissions undertaken in good faith while providing health care services in support of the state's COVID-19 response. Applies to acts or omissions stemming from a lack of resources that renders the professional or facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic and that resulted in the damages at issue. Exception for acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act.

**E.O. No. 7S** requires all insurers domiciled or conducting business in Connecticut to issue a 60-day grace period for premium payments, policy cancellations, and non-renewals of insurance policies beginning Wednesday, April 1, 2020.

GA

**E.O. 04.14.20.01** extends civil liability immunity provided to "auxiliary emergency management workers" under **OCGA 38-3-35** to employees, staff, and contractors of healthcare institutions and medical facilities during the Public Health State of Emergency, unless willful misconduct, gross negligence, or bad faith can be demonstrated. Additionally, the services provided by the healthcare institutions and facilities would be afforded the same protections. For the purposes of this order, a healthcare institution or medical facility includes hospitals (including general hospitals, destination cancer hospitals, and specialty hospitals), nursing homes, assisted living communities, personal care homes, ambulatory surgical treatment centers, fixed or mobile specimen collection centers or health testing facilities, birthing centers, traumatic brain injury treatment centers, free standing imaging centers, institutional infirmaries, public health centers, and diagnostic and treatment centers.

**O.C.G.A. Section 38-3-35** provides civil liability immunity for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management worker or member of any agency engaged in emergency management activity. Exception for personal injury or property damage resulting from cases of willful misconduct, gross negligence, or bad faith.

HI

**E.O. No. 20-05** directs all healthcare facilities, healthcare professionals, and healthcare volunteers to render assistance in support of the State's response to the disaster recognized by the COVID-19 Emergency Proclamations. The order also provides civil liability immunity to healthcare facilities, healthcare professionals, and healthcare volunteers for any death or injury to persons, or property

	<p>damage alleged to have been caused by any act or omission resulting from the rendering of healthcare services in response to the State's response to the COVID-19 outbreak. Immunity covers death, injury, and property damage stemming from both COVID-19-related care and triage care (i.e., cancellation or postponement of elective surgeries and procedures). Exception for death or injury to persons or property damage caused by willful misconduct, gross negligence, or recklessness of the healthcare facility.</p>
IL	<p><a href="#">COVID-19 E.O. No. 17</a> provides civil liability immunity to medical professionals, medical volunteers, and healthcare facilities for any injury or death alleged to have been caused by any act or omission by the covered entity in rendering healthcare services in response to the COVID-19 outbreak. Exemptions for gross negligence or willful misconduct.</p>
IN	<p><a href="#">IC 34-30-13.5-1</a> provides civil liability immunity to health professionals for any act or omission relating to the provision of healthcare services in response to an event that is declared a disaster emergency regardless of whether the provision of healthcare services occurred before or after the declaration of a disaster emergency. Protection is limited to healthcare services provided within the medical professional's scope of practice at a location where healthcare services are provided.</p> <p><a href="#">DOI Bulletin 252</a> requests all insurance companies and HMOs in Indiana to institute a moratorium on cancellations and non-renewals of any insurance policy in effect for a policyholder in Indiana for a 60-day period for any premium payment due from March 19, 2020 to May 18, 2020. It also suspends requirements for healthcare providers participating in the Indiana Patient's Compensation Fund (PCF) to hold an Indiana license, clarifies that out-of-state licensed providers and those coming out of retirement to serve must be enrolled with DOI to participate in the PCF. PCF surcharge payments are extended from 30-days to 90-days.</p>
KS	<p><a href="#">E.O. 20-26</a> provides civil liability immunity, pursuant to <a href="#">K.S.A. 48-915</a>, to healthcare professionals and facilities that make clinical and triage decisions and render assistance, testing, care, or advice in the care of patients reasonably suspected or confirmed to be infected with COVID-19, rendered in response to any Kansas Department of Emergency Management mission relate to the COVID-19 outbreak and the proclamation issued declaring a state of disaster emergency. Exception for any adverse event or injury caused by the willful misconduct, gross negligence, recklessness, or bad faith of a healthcare provider and/or facility. This order doesn't limit or change protections from liability under state law, nor does it extend to medical treatment or procedures performed in the ordinary or customary course of practice. The order also suspends certain licensure, scope of practice/supervision, and maintenance of certification requirements pertaining to certain healthcare professionals, including physician assistants, advanced practice registered nurses, registered nurses, licensed practical nurses, licensed pharmacists, and medical volunteers.</p> <p><a href="#">K.S.A. § 65-2891</a> provides limited civil liability immunity to healthcare professionals for acts or omissions stemming from emergency care or assistance provided to an injured person. Exception for gross negligence and willful or wanton acts or omission.</p>
KY	<p>The Department of Insurance issued a <a href="#">bulletin</a> recommending that medical professionals inform their MPL insurer if they decide to deliver care outside their scope of practice. Captives and self-insured entities will be permitted to let their members practice outside their normal practice setting without being deemed to be unlicensed insurance providers.</p>

LA	<a href="#"><u>LSA R.S. 29:771(B)(2)(c)</u></a> provides civil liability immunity to any healthcare provider who causes death or injury to any person, or damage to any property, during a declared public health emergency. Excepts gross negligence or willful misconduct.
MA	<p><a href="#"><u>Bulletin 2020-08</u></a> asks all MPL insurance carriers, surplus lines carriers, and risk retention groups offering MPL coverage in the Commonwealth to review their existing coverage and/or coverage forms to ensure that such coverage provides flexibility where needed and/or to file or add endorsements to their existing policies to ensure that existing coverage will apply to healthcare professionals who are acting within the scope of their professional license when they respond to COVID-19 public health crisis, whether within Massachusetts or in another state. References recent executive order issued by Governor Baker to ensure adequate public access to medical care.</p> <p><a href="#"><u>Chapter 64 of the Acts of 2020</u></a> provides civil liability immunity to healthcare professionals and facilities for any damages alleged to have been sustained by an act or omission in the course of providing healthcare services in good faith during the COVID-19 emergency and pursuant to an emergency rule. Exception for acts or omissions 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 healthcare facility or professional providing healthcare services. Immunity also doesn't apply to consumer protection actions brought by the Attorney General, or to false claims actions brought by or on behalf of the Commonwealth. Also provides civil immunity to a volunteer organization for damages arising from the use of the organization's facility to render medical treatment related to the COVID-19 emergency, unless the damages resulted from the organization's gross negligence, recklessness, or conduct with an intent to harm.</p>
MD	<a href="#"><u>Code, Public Safety § 14-3A-06</u></a> provides civil or criminal liability immunity to a healthcare provider who acts in good faith and under a catastrophic health emergency proclamation.
MI	<p><a href="#"><u>E.O. 2020-30 (COVID-19)</u></a> clarifies that state law (see below) providing civil liability immunity to healthcare professionals or designated healthcare facilities that provide medical services at the request of a state official applies to the current COVID-19 pandemic.</p> <p><a href="#"><u>S.899</u></a> amends the current code to add health facilities to the list of entities that receives protection, clarify the individuals who get protection (by adding the term "health professionals" and then defining it), and link the protections to "public health emergencies" in addition to "disasters" which was included under the current statute. The bill also removes the previous requirement that protections be tied to medical services provided at the request of a state official.</p> <p><a href="#"><u>MCL 30.411(4)</u></a> provides civil liability immunity to physicians and licensed hospitals who render services during a declared state disaster and at the express or implied request of a state official or agency or county or local coordinator or executive body, regardless of how or under what circumstances or by what cause those injuries are sustained. Exception for acts or omissions that are willful or gross negligence. If an exception is invoked, standard of care required of persons licensed in the state shall apply.</p>
MS	<a href="#"><u>E.O. 1471</u></a> provides civil liability immunity to healthcare professionals and facilities for any injury or death alleged to have been sustained because of acts or omissions while providing healthcare

services including, but not limited to, screening, assessing, diagnosing, treating patients for COVID-19. Civil liability immunity also applies to acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic that renders the healthcare professional or facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic. Exception for acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct, or would otherwise constitute a false claim under 31 U.S.C. §3729 *et seq.*

NC

[E.O. No. 130](#) requests all licensed/authorized healthcare professionals to provide emergency services, and declares all those doing so to be deemed "emergency management workers" thereby granting them immunity from civil liability (excluding willful misconduct, gross negligence, or bad faith) under state law. Also authorizes the waiver of regulations to allow for increased health facility capacity or authority to provide certain services, and waives certain healthcare professional licensing requirements.

[S.L. 2020-3](#) aims to bolster the State's response to the COVID-19 epidemic by addressing various healthcare issues. The new law grants civil liability immunity to healthcare providers and healthcare facilities for acts or omissions in the course of arranging good faith healthcare services in response to the COVID 19 epidemic and for the duration of the COVID-19 emergency. Immunity would not apply if the damages were caused by willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the healthcare provider or facility. Volunteer organizations would also be immune from liability for damages that occur at their facility unless there was willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the volunteer organization.

NJ

[E.O. No. 112](#) provides civil liability immunity to healthcare professionals and facilities for acts or omissions undertaken in good faith in the course of providing healthcare services in support of the state's COVID-19 response, regardless of whether the care is delivered within the healthcare professional's scope of practice. Exception for acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct. Liability immunity applies to healthcare professionals licensed in the state and out-of-state healthcare professionals with a temporary license; Liability immunity applies to traditional healthcare facilities, any modular field treatment facility, and any other site temporarily designated as a healthcare facility by the Department of Health. Provides process whereby retired and foreign medical professionals can obtain temporary license to assist with the COVID-19 pandemic response. Waives scope of practice requirements for advance practice nurses and physician assistants. Order covers any acts or omissions occurring any time during the State of Emergency or Public Health Emergency, whichever is longer.

[P.L. 2020, c.18](#) would provide civil liability immunity to healthcare professionals and medical facilities for injury or death stemming from an act or omission in the course of providing medical services in support of the COVID-19 outbreak pursuant to the Governor's public health emergency and state of emergency declarations. Liability protection covers telemedicine services and treating patients outside the medical professional's scope of practice. Exception for acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct. Also authorizes temporary reinstatement and recertification of certain professional certifications.



NV	<p><b><u>Directive 011</u></b> clarifies that healthcare professionals performing emergency management services in response to the COVID-19 pandemic pursuant to NRS 414.110 will be immune from civil liability. The directive also requires professional licensing boards to temporarily waive licensing requirements pertaining to out-of-state, foreign, and other skilled medical professionals who are not licensed in the state. The directive also temporarily authorizes medical professionals to practice outside their scope of practice, within the limits of their competency, to help bolster the state's healthcare system during the duration of this pandemic.</p> <p><b><u>NRS 414.110</u></b> provides civil liability immunity to healthcare professionals who perform emergency management services in response to the COVID-19 pandemic. Exception for cases of willful misconduct, gross negligence, or bad faith.</p>
NY	<p><b><u>E.O. 202-10</u></b> provides civil liability immunity to all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses, and licensed practical nurses for any injury or death alleged to have been sustained directly as a result of an act or omission in the course of providing medical services in support of the State's COVID-19 outbreak response. Excepts injury or death caused by gross negligence.</p> <p>New York's FY2021 final budget (<b><u>S7506-C/A9506-C</u></b>) included the Emergency Disaster Treatment Protection Act (Part GGG) which grants qualified immunity to hospitals, nursing homes, administrators, board members, physicians, nurses, and other providers from civil and criminal liability arising from decisions, acts, and omissions occurring from the start of Gov. Cuomo's March 7<sup>th</sup> emergency declaration through its expiration. Covers liability stemming from the care of individuals with and without COVID-19.</p>
OK	<p><b><u>E.O. 2020-13 (3<sup>rd</sup> Amended)</u></b> extends civil liability immunity already provided to certain entities under 76 O.S. §5.9 to healthcare providers and healthcare facilities providing care during the COVID-19 health emergency. Statutory exception for gross negligence, or willful or wanton misconduct apply to healthcare providers and facilities.</p> <p><b><u>76 O.S. §5.9</u></b> provides civil liability immunity to any individual, business, church, or school that renders emergency care, aid, shelter, or other assistance during a natural disaster or catastrophic event, unless the damage was caused by the gross negligence, or willful or wanton misconduct of the individual or entity rendering the emergency care, aid, shelter, or assistance.</p>
PA	<p><b><u>5/6/20 Executive order</u></b> grants civil liability immunity to healthcare professionals who are engaged in emergency and disaster services activities related to the Commonwealth's COVID-19 disaster emergency response. It also extends immunity to medical professionals that provide services in any healthcare facility as defined by the Health Care Facilities Act, as well as any nursing facility, personal care home, assisted living facility, or any alternate care site, community-based testing site or non-congregate care facility used for the purpose of conducting emergency and disaster services activities related to the Commonwealth's COVID-19 disaster emergency response. The order provides immunity for any person, organization, or authority allowing real estate or other premises used for emergency services without compensation. Finally, it suspends or removes regulatory barriers that would otherwise impede or prevent out-of-state, retired, or other qualified practitioners from providing services where needed in the Commonwealth. Civil liability immunity provided by this executive order does not extend to acts or omissions that constitute a crime, gross negligence, or fraud, malice, or other willful misconduct. The order explicitly does not apply to healthcare</p>

	professionals rendering non-COVID-19 medical and health treatment or services to individuals, nor does it apply broadly to healthcare facilities.
TX	Gov. Abbott is expected to issue an executive order waiving civil liability for medical professionals who respond to the COVID-19 pandemic. Awaiting details.
Utah	<u>S.B. 3002</u> provides civil liability immunity to a healthcare provider for any harm resulting from any act or omission in the course of providing health care in good faith during a declared major public health disaster under certain conditions. Definition of <i>healthcare provider</i> under <u>78B-3-403</u> includes various healthcare facilities. Exception for gross negligence and intentional or malicious misconduct. Healthcare is not deemed to be in breach of the applicable standard of care under certain conditions, such as that the care is rendered within the healthcare provider's scope of practice; Provides limited civil immunity for healthcare providers who use certain treatments, investigational drugs, and/or investigational devices during a major public health emergency; Provides limited civil immunity for assisting a state agency in providing a qualified treatment during a major public health emergency. Signed into law on 4/22/20. The law will be added to the Utah Code soon.
VA	<u>E.O. Number Sixty</u> clarifies the application of state liability protections under <u>§8.01-255.01</u> and <u>§8.01-255.02</u> of the Virginia Code to healthcare providers who respond to COVID-19. Specifically, the order coupled with the referenced statutory sections ensure civil liability immunity for healthcare providers who use triage strategies, such as prioritizing which patients receive care and deviating from the standard of care, during the COVID-19 emergency. There is an exemption for gross negligence or willful misconduct. The order fails to extend the same liability protection to healthcare facilities.
VT	<u>Add. 9 to E.O. 01-20</u> clarifies that under protections afforded by <u>20 V.S.A. §20</u> , healthcare facilities, healthcare providers, and healthcare volunteers would be immune from civil liability for any death, injury, or loss resulting from COVID-19-related emergency management services or response activities, except in the case of willful misconduct or gross negligence. The order goes on to define key terms to help clarify the State's interpretation of the scope of the civil liability immunity provided under <u>20 V.S.A. §20</u> .
WI	<u>2019 Wisconsin Act 185</u> provides civil liability immunity to a healthcare professional, healthcare provider, or an employee, agent, or contractor of a healthcare professional or healthcare provider, for the death or injury to any individual or any damages caused by actions or omissions following the delivery of healthcare services during the COVID-19 public health emergency, and 60 days following the termination of the emergency. To be immune from liability, healthcare services must be in good faith and be consistent with state or federal guidance related to the public health emergency. Exception for deaths or injuries stemming from reckless or wanton conduct or intentional misconduct. The law also extends civil liability immunity to manufacturers, distributors and sellers of emergency medical supplies and equipment that donate or sell their product. These manufacturing entities would be exempt from civil liability only if the product were sold or donated at a price that does not exceed the cost of production.  <u>3/31/20 Bulletin</u> issued by the Wisconsin Office of the Commissioner of Insurance (OCI) requests that MPL insurers cover licensed healthcare providers who treat patients via telemedicine as if they are treating patients in person for the duration of the COVID-19 Public Health Emergency issued by

	the Governor's Executive Order #16. The bulletin also asks MPL insurers to cover out-of-state medical providers treating patients with a temporary license for the duration of the COVID-19 Public Health emergency.
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**For more information, please contact our Government Relations Department at (301) 947-9000 or [governmentrelations@MPLassociation.org](mailto:governmentrelations@MPLassociation.org).**

**5/12/20**