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Protect Pandemic Healthcare Providers from Unnecessary Lawsuits

The COVID-19 pandemic has resulted in healthcare challenges, unlike anything in our modern medical history. Healthcare providers and facilities have found themselves treating patients while facing workforce shortages, inadequate or rationed safety supplies, and a combination of insufficient information and changing guidance from federal, state, and local government officials.

Healthcare providers have worked to protect patients *despite the following risks*:

- **Practitioner shortages** have required providers to treat patients outside their general practice areas and prompted retired physicians to return to the workforce;
- **Inadequate protective safety gear** that could result in the inadvertent transmission of the virus;
- **Lack of essential medical equipment**, including ventilators, which may require the rationing of care;
- **Inadequate testing** leading to delayed or flawed diagnosis; and
- **Delayed treatment** of elective and non-COVID-19 medical treatments to save resources for coronavirus patients.

Providers have faced these challenges and others and continue to go above and beyond. Countless stories highlight their ability to treat the sick and bring comfort to others, often without regard to their own personal wellbeing.

*Now, doing so has left pandemic responders susceptible to the threat of substantial liability.*¹

Preventing medical lawsuit abuse from going viral

There is early evidence — based on personal injury attorney advertisements and aggressive domain name marketing — that solicitations for medical liability cases are on the rise.² These advertisements aim to, among other things, recruit as plaintiffs family members of those who became sick or died from COVID-19.³

Anecdotal evidence from medical liability insurers cites notices received each week, informing them of potential claims being filed against their insureds.

As of May 11, 17 states have taken early steps to protect pandemic responders and ensure their vital work can continue without the threat of medical liability lawsuits.⁴

In doing so, these states have provided healthcare professionals and facilities immunity from civil liability for any injury or death alleged to have been sustained because of any acts or omissions undertaken in good faith while providing healthcare services in support of the Nation's COVID-19 response.

¹ "U.S. doctors on coronavirus frontline seek protection from malpractice suits," *Reuters*, April 2, 2020.

² "COVID-19: Malpractice Risks When Treating Patients," *Medscape*, April 29, 2020

³ "Stopping a Lawsuit Epidemic," *The Wall Street Journal*, April 23, 2020.

⁴ "[COVID-19 Liability Initiatives by State](#)," *Health Coalition on Liability and Access*.

While the Health Coalition on Liability and Access applauds these states for recognizing the threat that lawsuits pose to healthcare access during the pandemic, federal action is required.

Protecting patients with a federal response

A comprehensive pandemic response is unattainable if it is based on protections that vary from state to state.

The tremendous burden on our healthcare system created by COVID-19 has required many healthcare providers to practice across state lines, without the luxury of choosing to practice only in a state that has provided liability protections.

Additionally, not only are state liability waivers — whether through executive order or legislation — *subject to challenge from personal injury attorneys*, but many states are *blocked altogether from waiving state laws*, even during a situation as severe as the COVID-19 pandemic.

A national emergency needs a national solution — passing limited immunity for healthcare providers at the federal level.

Building on provisions adopted by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the HCLA supports incorporating language in any future pandemic response legislation granting *targeted immunity from liability for healthcare professionals and the facilities in which they serve*.

This immunity provision would be triggered if:

- The act or omission occurred during the declared COVID-19 public health emergency or within 60 days of termination of the emergency;
- The act or omission occurred while providing or arranging care;
- The services were within the provider's scope of licensure/certification, without regard as to whether the service fell within the usual scope of practice; and
- The services were provided in good faith.

Additional actions covered by the provision would include those taken based on direction or guidance from any Federal, State, or local official/department/agency as well as those due to a lack of resources attributable to the declared emergency.

This language would include exceptions for care that constituted gross negligence or willful misconduct. It would preempt all state and local laws, except for those that provide greater protection than federal legislation.

The Health Coalition on Liability and Access strongly supports comprehensive protections for the healthcare professionals and facilities that have not wavered in their willingness to provide for the American public.

Ensure these providers do not face unwarranted legal action for their efforts in responding to the COVID-19 crisis by swiftly incorporating pandemic immunity provisions in future legislation.