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April 7, 2020

The Hon. Nancy Pelosi, Speaker of the House
United States House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

The Hon. Mitch McConnell, Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Dear Speaker Pelosi and Majority Leader McConnell:

On behalf of our 36 member organizations who are tirelessly working to support healthcare professionals and facilities facing a challenge unlike anything in our modern medical history, the Health Coalition on Liability and Access commends your actions in support of those on the front lines of the COVID-19 pandemic. Right now, further action providing them relief from the threat of lawsuits is in the best interest of these professionals and facilities, as well as the patients they are called to serve.

Our healthcare professionals and facilities are putting themselves at risk each day while facing workforce shortages, inadequate safety supplies, and insufficient information or changing guidance from federal, state, and local government officials. Despite this, they continue to go above and beyond, doing everything possible to treat the sick and bring comfort to others, often without regard to their own personal wellbeing. And while our healthcare professionals and facilities endure these numerous difficulties in providing care during the coronavirus outbreak, there is an additional threat that remains hanging over their heads like a sword of Damocles — medical liability lawsuits.

We, therefore, ask you to follow the lead of several states and immediately adopt legislation that provides health care 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 health care services in support of the Nation's COVID-19 response. Such legislation should not preempt stronger or broader state liability protections. Also, such legislation should maintain vital protections for those who are victims of acts of gross negligence or willful misconduct.

These legislative protections would ensure that the healthcare professionals and facilities that are so dedicated to preserving and protecting the health of the American public do not face unwarranted legal action for their efforts to respond to the COVID-19 crisis. Action at the federal level would provide a uniform level of protection and avoid the situation whereby a

patchwork of liability laws across the country would lead to unequal treatment of our frontline healthcare providers during this national crisis.

The following situations, which are occurring at this very moment, pose substantial liability risks:

- To meet increasing demand, physicians are being asked to provide treatments or care outside their general practice areas and for which they may not have the most up-to-date knowledge;
- Physicians who have left the practice of medicine are being asked to come out of retirement to address the shortage of healthcare providers;
- Healthcare professionals, and the facilities in which they practice, often have inadequate safety equipment that could result in the transmission of the virus from patient to provider and then to additional patients, or directly from one patient to another;
- Facilities are facing shortages of equipment, such as ventilators, and being forced to ration care;
- Inadequate testing could lead to delayed or flawed diagnosis;
- “Elective” surgeries and procedures are being delayed to preserve capacity for those with the coronavirus; and
- Patients with issues other than coronavirus are facing delayed treatments so that resources may be saved for coronavirus patients.

None of the aforementioned scenarios are the result of wrongdoing by caregivers or the facilities in which they operate. Rather, in some cases, these circumstances are unavoidable as healthcare professionals and the facilities in which they operate are forced to shift limited resources to address urgent needs, including under the recommendations or guidance by government officials. In others, providers are limited by the tools at their disposal, even when those efforts are, by necessity, less than ideal. In all cases, however, we know these healthcare professionals and facilities are making every effort to provide the best care possible to an increasingly larger patient population. And yet, they still face the threat of medical liability lawsuits — which could come long after public memory of their sacrifices is forgotten — due to circumstances that are frequently beyond their control.

Above all else, we must address the need to have as many healthcare professionals and facilities available as possible to treat the surge in patients brought on by the outbreak. We cannot achieve maximum capacity and capability, however, when healthcare professionals and facilities are asked to sacrifice so much while being simultaneously threatened with a future of numerous lawsuits based on circumstances that were outside of their control.

We urge you to take swift action and allow healthcare professionals and facilities to focus on the task at hand of helping those affected by the outbreak without having to worry about the threat of lawsuits. Because not all states can provide these necessary protections, congressional action is the only way to ensure our healthcare system can function at the level required to meet this ongoing crisis.

Thank you for taking the time to consider implementing immunity at the federal level for the healthcare professionals and facilities hard at work during this pandemic. Please do not hesitate to contact us should you have any questions or wish to explore these issues further. We look forward to working with you on these critical issues.

Sincerely,



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