



FAQs

Wisconsin Legislative Response to COVID-19: *Providing Civil Immunity*

What is it? New legislation (Wis. Stat. § 895.4801) adopted for the purpose of limiting the liability of health care providers in Wisconsin during the COVID-19 emergency.

What is the time period the legislation covers? The statutory protection extends from March 12, 2020, when the state of emergency was declared, until 60 days following termination of the state of emergency.

Why was it issued? To help ensure that our healthcare delivery system and its providers are protected without fear of civil liability as they serve patients during the COVID-19 crisis.

Who does this cover? Hospitals, health care professionals, health care providers, and employees, agents, or contractors of health care professionals or health care providers.

What types of activities does this cover? Broadly speaking, the statute protects health care workers from liability for any health care that is provided during the state of emergency if the care is consistent with federal, state or local guidelines or recommendations, and there is no reckless or wanton conduct, or intentional misconduct.

Can hospitals and healthcare providers still get sued by or on behalf of patients cared for during the COVID-19 crisis? This statute does not prevent patients and/or their families from filing lawsuits relating to care. However, the statute does provide a basis for moving to dismiss care-related lawsuits unless the court determines that there is the possibility of reckless or wanton conduct, or intentional misconduct. AAH will vigorously defend our providers in the event that lawsuits result from care that was rendered during this crisis.

What does reckless or wanton conduct, or intentional misconduct mean? That language reflects a standard of liability that must be proven by a plaintiff in order to prevail in a lawsuit. It requires proof that a provider's action was undertaken to deliberately harm the patient, or with utter disregard for the patient's rights and/or safety.

Can healthcare providers be held liable for decisions regarding which patients get a ventilator? If patient care surges result in critical shortages of ventilators, a systemwide protocol will be triggered that relieves individual providers from having to decide which patient gets a ventilator. Thus, if providers follow the protocol, any liability resulting from decisions regarding which patients get a ventilator would be covered by the organization. Because the protocol is consistent with federal, state or local guidelines or recommendations, and no reckless or wanton conduct, or intentional misconduct, is contemplated, AAH will vigorously defend any claims resulting from resource allocation decisions that are rendered during this state of emergency.

Can a healthcare provider be held liable for decisions made while practicing outside of their usual state (e.g., Wisconsin or Illinois) of practice? The statute protects hospitals, health care professionals, health care providers, and employees, agents, or contractors of health care professionals or health care providers without reference to states. We are confident that provided care is consistent with federal, state or local guidelines or recommendations, and there is no reckless or wanton conduct, or intentional misconduct, and provided other regulatory licensure requirements are met, the protection of the statute will extend to health care providers from other states.

Can a healthcare provider be held liable for decisions made while practicing outside of their usual scope of practice? The language in the statute is broad and protects health care workers if the care they provide is consistent with federal, state or local guidelines or recommendations, and there is no reckless or wanton conduct, or intentional misconduct. If a provider is asked to offer care outside their usual scope of practice, it will only be due to the state of emergency. AAH will vigorously defend our providers if lawsuits result from care that was rendered during this crisis.

Can healthcare providers face criminal prosecution for care rendered during this crisis? Criminal liability is highly unlikely in the absence of intent to cause harm or utter disregard for the patient's rights or safety. We are seeking confirmation from the State Attorney General's Office and local District Attorneys that criminal prosecutions will not be initiated in relation to care that is provided during this public health emergency that is consistent with federal, state or local guidelines or recommendations.

What if I am sued? If you are an aligned provider, we recommend that you contact your professional liability insurance provider as soon as possible. If the allegation results from care rendered due to COVID-19, then the newly enacted statute will likely serve as a basis for seeking to dismiss the lawsuit. Advocate Aurora Health employed providers will have full coverage under the Advocate Aurora Health professional liability insurance (med mal) policy. Contact Risk Management or Legal to report the action. A claim will be opened, and defense counsel assigned.