



FAQs

Illinois Executive Order in Response to COVID-19: *Providing Civil Immunity* *August 2020 Update*

What is it? An executive order signed by Governor Pritzker for the purpose of limiting the liability of hospitals and healthcare workers in Illinois.

What is the time period the Order covers? It starts April 1, 2020 and was originally declared to extend through the duration of the Gubernatorial Disaster Proclamations. Late in June, Governor Pritzker issued a new Disaster Proclamation and reissued some of the key Executive Orders for another 30 days, expiring July 26, 2020. However, the immunity from liability for health care facilities, professionals and volunteers was not reissued and expired effective June 27, 2020.

Why was it issued? To ensure that our healthcare delivery system is capable of serving those who are sick during the COVID-19 crisis without fear of civil liability.

Who does this cover? Hospitals; licensed or certified healthcare providers, including inactive and out-of-state workers; volunteers; EMS workers; medical and nursing students. The order is deliberately broad and will include various healthcare professionals that have already answered the call to service by previous Illinois COVID-19 Executive Orders.

What types of activities does this cover?

- Broadly, any health care given under the direction of the Illinois Emergency Management Agency (IEMA) or Department of Public Health (DPH) in response to the Gubernatorial Disaster Proclamation.
- Cancelling or postponing elective procedures as defined in DPH's COVID-19 Elective Surgical Procedure Guidance.
- Increasing the number of beds, preserving personal protective equipment or taking necessary steps to prepare to treat patients with COVID-19.

What does it mean that health care facilities and healthcare professionals are “rendering assistance to the State by providing healthcare services in response to the COVID-19 outbreak”? Pursuant to the IEMA Act and the Good Samaritan Act, the state has directed healthcare facilities and providers to render assistance in support of the state’s response to the COVID-19 disaster as recognized by the Gubernatorial Disaster Proclamations.

Can hospitals and healthcare providers still get sued by patients cared for during COVID-19 crisis? This executive order does not guarantee against a lawsuit being filed. However, it provides an argument for dismissal of the lawsuit unless the court determines there is a question that the conduct warrants willful and wanton misconduct. AAH will vigorously defend our providers in the event lawsuits result from care that was rendered during this crisis.

What does willful and wanton misconduct mean? It is a standard of liability that must be proven by a plaintiff in order to prevail in a lawsuit. It means that an action was undertaken to deliberately harm or with utter disregard of another’s rights or safety.

Can healthcare providers be held liable for decisions regarding which patients get a ventilator? The language in the IL executive order is broad to encompass decisions regarding ventilator use decisions as “rendering assistance to the State” in response to this crisis. In the event demands for space, supplies and staffing are highly disproportionate to the available resources, crisis standards of care may apply. The Illinois Department of Health has issued guidance on crisis standards of care. Here is a link to their website: <https://www.dph.illinois.gov/covid19/guidelines-emergency-preparedness-hospitals-during-covid-19>

Can a healthcare provider be held liable for decisions made while practicing outside of their usual state of practice? The executive order specifically recognizes the Illinois Department of Financial and Professional Regulation (IDFPR) and the DPH have taken measures to enable out-of-state providers to work in the State of Illinois. The executive order affords civil liability immunity to these providers.

Can a healthcare provider be held liable for decisions made while practicing outside of their usual scope of practice? Again, the language in the executive order is broad as it relates to health care professionals “providing healthcare services in response to the COVID-19 outbreak” in response to the Gubernatorial Disaster Proclamations.

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.

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 Governor's Executive Order will likely serve as a basis for seeking dismissal of the lawsuit. Advocate Aurora Health employed providers will have coverage under the applicable Advocate Aurora Health professional liability insurance program.

Is there anything similar issued in Wisconsin? Yes; Wisconsin enacted a statute (Wis. Stat. § 895.4801) that provides for similar protections that extend from March 12, 2020 to July 10, 2020. Please refer to the FAQ "Wisconsin Legislative Response to COVID-19: Providing Civil Immunity."