

COVID-19 Immunity Law? Be Careful What You Wish For

PUBLISHED ON

May 6, 2021

Despite Gov. Tom Wolf's disapproval, Pennsylvania lawmakers have been working toward a COVID-19 immunity law that would extend protections to health care providers and senior living facilities.

And while legislative efforts have failed thus far in Pennsylvania, other state laws - such as the new [COVID-19 immunity law in Florida](#) - now afford liability protections to health care entities. Still, some experts question whether such laws actually may invite litigation, rather than discourage it.

Although the Florida law does not offer blanket immunity, it presents serious obstacles for plaintiff attorneys in pursuing COVID-19 claims against providers and other defendants. The new law passed in March and applies to health care providers, schools, churches and other nonprofit or governmental entities. The law requires that a COVID-19 claim must be pleaded with particularity, specifically detailing how the injuries or illness occurred, or were caused by the defendant.

The law then places the burden on the plaintiff to prove that the defendant acted intentionally or with gross negligence in causing the plaintiff's COVID-related injuries. The law allows the defendant to assert, as an affirmative defense, that it substantially complied with government health standards or other relevant standards, including industry or professional standards, in dealing with the COVID-19 virus or infectious diseases generally. As an alternative defense, the defendant can assert that it was not possible to substantially comply with applicable standards as a result of widespread shortages in supplies, equipment or personnel.

While the new law imposes restrictions on COVID-19 lawsuits, it does not foreclose the lawsuits entirely. Indeed, some question whether the new law now gives plaintiffs a road map for establishing a COVID-19 claim by first addressing, and then carefully navigating, the law's threshold requirements.

In Pennsylvania, [Gov. Wolf already has vetoed a bill](#) that would have extended COVID-19 immunity to the state's health care providers and senior living facilities. The proposed bill resembled the new Florida law in many ways, including protection for providers that made a good faith effort to comply with government COVID-19 standards.

With or without immunity legislation, Pennsylvania's health care providers can expect that COVID-19 litigation may be coming. In preparation, senior living facilities and other providers can bolster their defenses by documenting their good faith efforts to comply with CDC, PA Department of Health and other agency directives and guidance during the pandemic. They also should document any obstacles or challenges faced in implementing COVID-19 safeguards.

Preparations taken now may protect organizations in facing COVID-19 litigation as an unpleasant aftershock from the pandemic.

If you have any questions about how your senior living facility or health care organization should be preparing against

possible COVID-19 litigation, please [contact me](#) or anyone in the [Barley Snyder's Senior Living](#) or Health Care industry groups.

DISCLAIMER: The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

The views expressed in this alert are those of the individual author and do not necessarily reflect the views of the firm or the firm's clients. The response to the COVID-19 pandemic is particularly challenging, evolving and, in many cases, can be controversial. Any views expressed in this alert are not intended to advocate for or endorse a particular governmental response to the pandemic.

:



Christopher J. Churchill

Partner

Tel: (717) 399-1571

Email: cchurchill@barley.com