

Pa. Health Care Workers Earn Qualified Malpractice Immunity

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Certain Pennsylvania health care workers treating COVID-19 patients will have immunity from negligence lawsuits after a declaration from the governor Wednesday.

Gov. Tom Wolf has issued the [executive order](#) giving qualified health care workers immunity from civil liability for injuries or deaths resulting from their actions taken in response to the COVID-19-related state of disaster emergency as previously set forth in [Wolf's disaster emergency proclamation](#). Citing the Pennsylvania law which has long provided state agents and employees with qualified immunity from civil liability, the order declares that a broad scope of individual health care workers are deemed agents of the state "solely for the purposes of immunity" as further set forth in the order.

The immunity provision applies to any individual who holds a license, certificate, registration or certification or is otherwise authorized to practice a health care profession or occupation in Pennsylvania. This would include any retired, out-of-state or other providers whose work here is facilitated by the [suspension or relaxation of various regulatory requirements](#).

To qualify for immunity, these individuals must be engaged in "emergency services activities" or the provision of "disaster services activities" related to the state's COVID19 disaster emergency response. The immunity applies to services provided across a variety of care settings, including acute care hospitals, nursing facilities, personal care homes, assisted living facilities, alternate care sites, community-based testing sites, and non-congregate care facilities.

However, the order makes it clear the immunity extends to the individuals, not the entities. The immunity does not apply to acts or omissions that constitute a crime, gross negligence, fraud, malice or other willful misconduct. The executive order also specifically provides that immunity is not being extended to health care professionals rendering "non-COVID-19 medical and health treatment or services to individuals."

The order also summarizes the numerous regulations relating to health care providers which the governor has previously suspended or relaxed, and then goes on to add additional provisions to that list. Newly relaxed regulations relate to several different types of facilities and providers, including long-term care facilities, ambulatory surgery facilities and home health agencies.

The order also provides that those who "voluntarily and without compensation" allow use of their property for any emergency services purpose will not be civilly liable for negligently causing the death, injury or damage to the property of any person who is present on the property for that purpose.

The governor's order is effective immediately and shall remain in effect for the duration of the disaster emergency.

If you have any questions on how the governor's order may assist you in defending claims arising from care provided

by your frontline worker during the COVID-19 pandemic, please [contact me](#) or any member of the [Barley Snyder Health Care Industry Group](#).

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