



# 50-State Survey of Liability Protections

For Senior Living and Long-Term Care Facilities









Dear Clients and Friends,

We are pleased to provide you with our 50-State Survey of Liability Protections for Senior Living and Long-Term Care Facilities.

Several states across the country have recently taken executive and/or legislative action that protects health care providers from civil and, in some cases, criminal liabilities arising from the COVID-19 pandemic. Among the most vulnerable providers covered by such protections are senior/assisted living and other long-term care facilities.

Because the scope of these protections and immunities varies by jurisdiction, Seyfarth attorneys have created this tool to better assist you and your organization to identify potential issue areas. It is increasingly critical for health care providers to be fully aware of all legal risks and liabilities they may face in the midst of the pandemic, so they can take proper precautions to protect against future liability claims.

Please contact us with questions about this document or to request additional state-specific information that may affect your business. We will update the Survey as legislation and guidance continues to develop. We also encourage you to visit the firm's [Beyond COVID-19 Resource Center](#), and visit our [Health Care](#) page to learn more about our industry group.

Sincerely,



**Cynthia J. Mitchell**  
Partner



**Kristin G. McGurn**  
Partner



**Jesse M. Coleman**  
Partner

Co-Chairs of Seyfarth's Health Care, Life Sciences & Pharmaceuticals industry group

**The following individuals contributed to this survey:** John Ayers-Mann (Alabama, Delaware, Florida, Georgia, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island); Garreth DeVoe (Colorado, Kansas, Kentucky, Louisiana, Michigan, Mississippi, New Mexico, Ohio, Oklahoma, Tennessee, Texas, Utah, Wyoming); Marlin Duro (Connecticut, District of Columbia, New York, Vermont); Tom Howley (Arkansas, Iowa, Maryland, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota, Virginia, West Virginia); Sara Rogers (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington); and Adam Young (Illinois, Indiana, Wisconsin).

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<p><b>AL</b> Alabama</p>	<p><a href="#">Proclamation, dated March 13, 2020</a></p> <p><a href="#">Proclamation, dated May 8, 2020</a></p>	<p><b>Proclamation, dated March 13, 2020:</b> Supplies an alternative standard of care for health care facilities and staff that have invoked their emergency operations plans and declares health care professionals and assisting staff executing such plans are “Emergency Management Workers” for purposes of state immunity under Title 31 of the Alabama Code. Immunities under the Proclamation and Title 31 of the Alabama Code extend to personnel who are engaged in implementing alternative standards of care plans and provides immunity from liability for injuries or death resulting from enacting such alternative standard of care plans. The Proclamation does not define the term “health care facilities.”</p> <p><b>Proclamation, dated May 8, 2020:</b> Extends liability protection to health care facilities licensed by the state of Alabama for any acts or omissions related to, or in connection with, COVID-19 transmissions or covered COVID-19 response activity, unless such acts or omissions are the result of wanton, reckless, willful, or intentional misconduct. Health care providers are defined as “any health care providers as the term is defined in Alabama Code § 6-5-542(1) or any of the providers defined in § 6-5-481(1)-(8); any health care facility licensed or approved in the state of Alabama, including, but not limited to, any facility licensed or approved by the Alabama Department of Health or mental health facility certified by the Alabama Department of Mental Health, including any health care facility or pharmacy operating and providing services pursuant to [the April 2, 2020 Proclamation]; [and] any medical or health care professional, individual, or entity holding a [permanent or temporary] license, registration, permit, certification, or approval to practice a health care profession or occupation in Alabama, including under the Public Readiness and Emergency Preparedness Act and any declaration of the Department of Health and Human Services in accordance with that Act, under any [COVID-19 Proclamations], under any rule or regulation promulgated by a licensing board or agency pursuant to such emergency Proclamations, or otherwise in response to the COVID-19 pandemic [including support personnel.]”</p>
<p><b>AK</b> Alaska</p>	<p><a href="#">Senate Bill 241 – Extending COVID-19 Declaration / Relief, sec. 4 (a)-(e)</a></p>	<p>If a public health agent or health care provider “takes action based on a standing order issued by the chief medical officer,” they are “not liable for civil damages resulting from an act or omission in implementing the standing order” except for instances of “gross negligence, recklessness, or intentional misconduct.”</p> <p>AS 18.15.395 defines “health care provider” as “any person that provides health care services; “health care provider” includes a hospital, medical clinic or office, <b>special care facility</b>, medical laboratory, physician, pharmacist, dentist, physician assistant, nurse, paramedic, emergency medical or laboratory technician, community health worker, and ambulance and emergency medical worker”; and “public health agent” is “an official or employee of the department who is authorized to carry out provisions of AS 18.15.355 - - 18.15.395.”</p> <p>*The Alaska Chief Medical Officer issued several “Health Mandates” or “Standing Orders”—including Health Mandate 015 – which allows “health care facilities,” including nursing facilities and home health agencies—to re-engage in non-urgent low-risk-type services, assuming specified criteria has been met.</p>
<p><b>AZ</b> Arizona</p>	<p><a href="#">Executive Order 2020-13, enacted March 23, 2020</a></p> <p><a href="#">Executive Order 2020-27, the “Good Samaritan Order,” enacted April 9, 2020</a></p>	<p><b>Executive Order 2020-13:</b> Restates A.R.S. § 36-790, and says a “person or health care provider,” under A.R.S. Title 36, Ch. 6, Art. 9, is “immune from civil or criminal liability” when acting in good faith. A.R.S. § 36-790(B) states that a person acting under the article is presumed to act in good faith.” A.R.S. §12-2291 defines “health care provider” to mean anyone who is licensed under §32-101, et seq., a health care institution under § 36-401 ... or health care services organization licensed under §20-1051. Health care institutions include those other than a hospital, specifically adult day health facilities, adult day health services, adult foster care homes, adult foster care services, assisted living centers and/or facilities, and assisted living homes. A.R.S. §36-401.</p> <p>“Good Samaritan Order”: Essentially gives immunity from civil liability to those healthcare professionals, emergency medical care technicians, health care institutions, modular field treatment facility or non-licensed healthcare institution that provided COVID related services are presumed to act in good faith and immune from liability, except from gross negligence or reckless/willful misconduct.</p>

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>AR</b> Arkansas	<a href="#">Executive Order 20-18, enacted April 13, 2020</a>	<p>Expands the definition of “emergency responder” to provide immunity from liability for health care workers, including physicians, physicians’ assistants, specialist assistants, nurse practitioners, and registered and practical nurses for any injury or death as a result of an act or omission in the course of providing medical services in support of the State’s response to the COVID-19 outbreak or the implementation of necessary measures to control the COVID-19 epidemic. This immunity, however, does not extend to providers acting with gross negligence, willful misconduct, or bad faith.</p> <ul style="list-style-type: none"> <li>• Covers “physicians, physicians’ assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses” “whether employed by the State or Federal Government, a private entity, or non-profit entity.”</li> <li>• Covers those “providing medical services in support of the State’s response to the COVID-19 outbreak or the implementation of measures to control the causes of the COVID-19 epidemic.”</li> </ul>
<b>CA</b> California	Cal. Gov’t Code § 8659	Provides immunity to physicians, surgeons, hospitals, pharmacists, respiratory care practitioners, or nurses who provide services during a state of emergency at request of any state or local agency, unless it is a willful act or omission.
<b>CO</b> Colorado	Executive Orders D 2020 003, 018, 032, 058, 076; C.R.S. § 24-33.5-711.5	Declaration of disaster emergency extended through June 21, 2020 invokes Colorado disaster immunity statute, C.R.S. § 24-33.5-711.5, which provides that a, “hospital, physician, ... health care provider, ... or emergency medical service provider ... that in good faith comply completely with board of health rules regarding the emergency epidemic and with executive orders regarding the disaster emergency shall be immune from civil or criminal liability for any action taken to comply with the executive order or rule ... .”
<b>CT</b> Connecticut	<a href="#">Executive Order No. 7V</a>	<p>Provides immunity to health care professionals and health care facilities from suit for civil liability for any injury or death alleged to have been caused by acts or omissions undertaken in good faith while providing health care services in support of the State’s COVID-19 response including but not limited to acts or omissions undertaken because of a lack of resources, attributable to the COVID-19 pandemic, that renders the health care professional or health care facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic. No immunity for acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act pursuant to Section 4-275 et seq. of the Connecticut General Statutes or 31 U.S.C. §§3729 et seq. Existing immunity(ies) conferred by Connecticut law remain intact.</p> <p>The term “health care facility” means a licensed or state approved hospital, clinic, nursing home, field hospital or other facility designated by the commissioner of the Department of Public Health for temporary use for the purposes of providing essential services in support of the State’s COVID-19 response.</p> <p>Applies to acts or omissions occurring at any time during the public health and civil preparedness emergency declared on March 10, 2020 (as renewed or extended), including acts or omissions occurring prior to the Order.</p>
<b>DE</b> Delaware	No recent law or Executive Order, but see <a href="#">Del. Code Ann. Tit. 20 § 3144 and Joint Order, dated March 24, 2020</a>	The Joint Order dated March 24, 2020 extends the definition of public employees to include out-of-state health care providers, inactive health care providers, or qualified persons appointed under the terms of the order. Health care providers is defined to include in-state practical, professional, and advanced practice registered nurses, some of whom may have inactive licenses. The Order does not specifically apply to any facilities or organizations. The definition also includes out-of-state nurses of the same category with active licenses. The Order declares such practitioners public employees and extends liability immunities pursuant to Del. Code Tit. 10 § 4001 to act or omission involving the exercise of discretion arising out of the performance of official duties done in good faith without gross or wanton negligence.

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>DC</b> District of Columbia	<a href="#">D.C. Act 23-283. COVID-19 Supplemental Corrections Emergency Amendment Act of 2020</a> ; Mayor's Orders 2020-046, -050, -063, -066, -067	<p>Section 23-283 amends Section 5a(d) of the District of Columbia Public Emergency Act of 1980 to exempt from liability in a civil action, a health care provider, first responder, or volunteer who renders care or treatment to a potential, suspected, or diagnosed individual with COVID-19 for damages resulting from such care or treatment of COVID-19, or from any act or failure to act in providing or arranging medical treatment for COVID-19 during a declared public-health emergency.</p> <p>The limitation on liability provided above applies to any healthcare provider, first responder, volunteer, or District government contractor or subcontractor of a District government contractor ("provider"), including a party involved in the healthcare process at the request of a healthcare facility or the District government, and acting within the scope of the provider's employment or organization's purpose, or contractual or voluntary service, even if outside the provider's professional scope of practice, state of licensure, or with an expired license, who:</p> <ul style="list-style-type: none"> <li>(i) Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act, approved May 30, 2018 (Pub. L. No. 115-176; 132 Stat. 1372);</li> <li>(ii) Provides direct or ancillary healthcare services or healthcare products, including direct patient care, testing, equipment or supplies, consultations, triage services, resource teams, nutrition services, or physical, mental, and behavioral therapies; or</li> <li>(iii) Utilizes equipment or supplies outside of the product's normal use for medical practice and the provision of healthcare services to combat the COVID-19 virus.</li> </ul> <p>Does not apply to conduct that is criminal, fraudulent, malicious, grossly negligent, willful, reckless, in breach of a contract, or unrelated to direct patient care.</p> <p>Government contractors and subcontractors shall not be liable for damages for conduct alleged to have caused an individual to contract COVID-19.</p> <p>The limitation on liability applies during a declared public health emergency and to damages that ensue at any time from acts, omissions, and donations made during the emergency. Mayor's Orders 2020-046, -050, -063, -066, and -067 declare and extend the Public Health Emergency from March 11, 2020 to July 24, 2020.</p>
<b>FL</b> Florida	No applicable law or Executive Order	No liability protections have been extended in Florida to protect health care providers or long-term care providers. One legislator in Florida has announced his <a href="#">intention to introduce legislation</a> extending liability immunity to businesses as soon as the next special session of the legislature is convened.
<b>GA</b> Georgia	<a href="#">Executive Order, dated April 14, 2020</a>	Designates services provided during the Public Health State of Emergency by health care institutions and medical facilities, including hospitals, nursing and personal care homes (but excluding physician and dentist offices), as emergency management services. The order does not specify whether such services must be related to COVID-19. It also designates employees of those organizations as auxiliary emergency management workers. As a result, pursuant to Georgia Code § 38-3-35, such organizations and their employees are immune from liability resulting from injury or death resulting in the course of providing such emergency management services, provided such injuries or deaths were not the result of bad faith, willful misconduct, or gross negligence.
<b>HI</b> Hawaii	Executive Order No. 20-05, enacted April 16, 2020	Provides civil immunity to health care facilities (including hospitals, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, assisted living facilities, special treatment facilities and programs, adult day health centers, independent group residences, and therapeutic living programs), health care professionals, and health care volunteers who comply in good faith with all state and federal emergency orders when providing health care services in response to the COVID-19 outbreak, unless it is established that the death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness.
<b>ID</b> Idaho	No legislative or executive action taken	The State of Idaho has not granted any immunity related to health care services provided in response to the COVID-19 pandemic, but Idaho Code § 39-1391c generally provides physicians and hospitals civil immunity in emergency care situations, absent of gross negligence.

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>IL</b> Illinois	<a href="#">Executive Order 2020-19 (April 1, 2020)</a>	Provides immunity to “Health Care Facilities” (including hospitals, nursing homes and intermediate care facilities) from civil liability for any injury or death alleged to have been caused by any act or omission by the Health Care Facility, which injury or death occurred at a time when a Health Care Facility was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by gross negligence or willful misconduct of such Health Care Facility.
<b>IN</b> Indiana	<a href="#">Guidance Concerning Liability for Healthcare Providers and Facilities, Indiana State Department of Health (April 3, 2020)</a>	Interpretive guidance issued by the Indiana State Department of Health (DOH) on the existing Indiana statute, Ind. Code 34-30-13.5, which provides immunity from civil liability for care provided in response to a declared disaster emergency unless the care resulted from gross negligence or willful misconduct. The guidance confirms the statute applies to the COVID-19 emergency; clarifies that immunity applies to a licensed health care provider acting within the scope of their license as employee or volunteer; provides that inactive license holders complying with Exec. Order 20-13 also qualify for immunity; and explains that immunity applies to any facility that provides health care services by a professional licensed under Indiana law or the law of another state as well as non-facility locations set-up in response to the emergency.
<b>IA</b> Iowa	<a href="#">PPE Shortage Order, issued by Iowa Department of Public Health on April 9, 2020</a>	Order issued by the Iowa Department of Health (DOH) requires health care providers to take certain steps to optimize PPE supply and extends the existing immunity protections under <a href="#">Iowa Code § 135.147</a> to health care providers, hospitals, and health care facilities, including long term care facilities, who are acting in compliance with the Order, or other guidance issued by the DOH or CDC, related to optimizing PPE supply, in good faith.
<b>KS</b> Kansas	<a href="#">Executive Order 20-26; K.S.A. § 40-3401; K.S.A. § 39-923</a>	Adult care homes (which include nursing facilities, assisted living facilities, residential health care facilities, and adult day care facilities) and hospitals “making clinical and triage decisions and rendering assistance, testing, care or advice in the care of patients reasonably suspected or confirmed to be infected with COVID-19 ... shall be deemed immune from suit ... unless it is established that any ... injury was caused by the willful misconduct, gross negligence, recklessness, or bad faith of such facility or health care provider.”
<b>KY</b> Kentucky	<a href="#">Kentucky Senate Bill 150; Ky. Rev. Stat. § 311.621</a>	<p>A health care provider “who in good faith render[s] care or treatment of a COVID-19 patient during the state of emergency shall have a defense to civil liability for ordinary negligence for any personal injury resulting from said care or treatment, or from any act or failure to act in providing or arranging further medical treatment, if the health care provider acts as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances.”</p> <p>This defense expressly includes providers who prescribe or dispense medications for off-label use to treat COVID-19, those who provide health care services (at the request of health care facilities or public health entities) that are outside the provider’s scope of practice, and/or those who utilize equipment or supplies outside of the product’s normal use. While not limited to these types of situations, given the current standards of medical negligence under Kentucky law, they will be the most likely to benefit from the immunity.</p> <p>Although this bill does not define “health care provider,” Kentucky Revised Statute § 311.621 defines this term to include health care facilities, which includes long term care facilities and hospitals.</p>
<b>LA</b> Louisiana	Louisiana Executive Proclamations Nos. 25, 75 JBE 2020; La. R.S. Tit. 29, Ch. 9	Declaration of public health emergency extended through June 26, 2020 invokes Louisiana disaster immunity statute La. R.S. Tit. 29, Ch. 9, which provides that, “[d]uring a state of public health emergency, any health care providers shall not be civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.” La. R.S. § 29:771(B)(2)(c). Health care providers include any “clinic, person, corporation, facility, or institution which provides health care or professional services ...” La. R.S. § 29:762(4).
<b>ME</b> Maine	No recent law or Executive Order, but see <a href="#">M.R.S. tit. 37-B § 784-A</a>	Maine has not enacted any existing laws to provide protection to health care providers or long term care providers. However, M.R.S. tit. 37-B § 784-A provides employees of the state immunity from liability for death or injuries while carrying out emergency management activities. While the statute allows the Maine Emergency Management Agency to call up health care providers as state employees, it has not yet done so.

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>MD</b> Maryland	Declaration of State of Emergency and Existence of Catastrophic Health Emergency— COVID-19; <a href="#">Maryland Code Public Safety § 14-3A-06</a>	Declaration of State of Emergency and Existence of Catastrophic Health Emergency—COVID-19 invokes <a href="#">Maryland Code Public Safety § 14-3A-06</a> which provides that health care providers, including hospitals, nursing facilities, practitioners, and emergency medical services providers, are “immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation.”
<b>MA</b> Massachusetts	<a href="#">PREP Act Directive, dated April 8, 2020</a>  <a href="#">Act to Provide Liability Protections for Health Care Workers and Facilities During the COVID-19 Pandemic, enacted April 17, 2020</a>	<b>PREP Act Directive:</b> Massachusetts Governor Charlie Baker issued the Prep Act Directive providing that health care professionals and health care facilities (including skilled nursing facilities, rest homes, assisted living residences and home health agencies) shall be immune from civil liability for any harm caused by, arising out of, relating to, or resulting from such professional’s or facility’s authorized activities, unless such harm was caused by willful misconduct. Authorized activities include the prescription, administration, delivery, distribution, or dispensing of Covered Countermeasures by a health care professional for the treatment, diagnosis, prevention, and mitigation of COVID-19 and the prescription, administration, delivery, distribution, or dispensing of Covered Countermeasures as part of any program established, supervised, or administered by a health care facility for the treatment, diagnosis, prevention, or mitigation of COVID-19 or as part of the Commonwealth’s response to the COVID-19 outbreak.  <b>Act to provide liability protections for health care workers and facilities during the COVID-19 Pandemic (S. 2640):</b> Protects health care professionals and facilities, including hospitals, mental health facilities, skilled nursing facilities, assisted living residences, community health centers, home health agencies participating in Medicare, licensed clinics, and sites designated by the commissioner of public health to provide COVID-19 related services from civil liability where treatment was impacted by the COVID-19 outbreak or the COVID-19 emergency rules. The immunity does not extend to (i) gross negligence, recklessness, conduct undertaken with an intent to harm, or discrimination based on race, ethnicity, national origin, religion, disability, sexual orientation, or gender identity; (ii) consumer protection actions brought by the Massachusetts attorney general; or (iii) false claims actions brought by or on behalf of the Commonwealth. Immunity extends to clinicians and health care facility administrators, executive, supervisors, board members, trustees, or other persons responsible for directing, supervising or managing a health care facility or its personnel.
<b>MI</b> Michigan	<a href="#">Executive Order 2020-30</a>	“[A]ny licensed health care professional or designated health care facility [which includes long-term care facilities] that provides medical services in support of this state’s response to the COVID-19 pandemic is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained, unless it is established that such injury or death was caused by the gross negligence, as defined in MCL 30.411(9) [defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results], of such health care professional or designated health care facility.”
<b>MN</b> Minnesota	Emergency Executive Orders 20-01, -53, -75; <a href="#">Minn. Stat. 12.61</a>	Proposed Minnesota Senate Bill 4603 would provide criminal, civil, and administrative immunity to persons engaged in health care services during the COVID-19 public health emergency authorization.  Declaration of emergency extended to July 13, 2020 invokes <a href="#">Minn. Stat. 12.61</a> which provides that “[d]uring the effective period of the emergency executive order, a responder [including physicians, registered and other nurses, certified nursing assistants, hospitals, nursing and boarding care facilities, home health care agencies, other long-term care providers] in any impacted region acting consistent with emergency plans is not liable for any civil damages or administrative sanctions as a result of good-faith acts or omissions by that responder in rendering emergency care, advice, or assistance. This section does not apply in case of malfeasance in office or willful or wanton actions.” Id.
<b>MS</b> Mississippi	<a href="#">Executive Order 1471</a>	“[A]ny Healthcare Professional or Healthcare Facility [which is defined to include licensed or state approved hospitals and nursing homes], absent a showing of malice, reckless disregard or willful misconduct, shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the Healthcare Professional’s or Healthcare Facility’s acts or omissions while providing healthcare services, including, but not limited to ... treating patients for COVID-19[.]”




State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>MO</b> Missouri	No formal action; legislation pending: <a href="#">Senate Bill 662 at § 537.037(5)</a> (passed Senate on 2/18/20; passed House on 5/5/2020)	Missouri has not yet implemented COVID-specific liability limitations. A bill currently pending approval, provides: "Any health care provider who in good faith renders care or assistance, with or without compensation, in connection with the COVID-19 pandemic, ... shall not be liable for any civil damages for any acts or omissions that occur during the period there is in effect an executive order of the governor of Missouri declaring that a state of emergency exists, other than damages occasioned by gross negligence or by willful or wanton acts or omissions in rendering the care or assistance." See <a href="#">Senate Bill 662 at § 537.037(5)</a> . The term "health care provider" includes, inter alia, physicians, hospitals, and long-term care facilities.
<b>MT</b> Montana	MT Code Ann. § 10-3-110	Montana's code provides civil immunity to health care professionals licensed to practice in Montana who render "emergency care, health care services, or first aid during a declared emergency," unless caused by gross negligence or willful and wanton misconduct. "Emergency care, health care services, or first aid" is not defined.
<b>NE</b> Nebraska	No formal state action	Nebraska has not implemented any broad, COVID-specific liability limitations. <a href="#">Executive Order 20-12</a> , however, temporarily suspends certain requirements of health care providers, such as limitations on the "total number of beds for which a hospital is licensed" see id. at ¶ 8, or notice requirements for any "changes in the type of use and location of hospital beds, see id. at ¶ 9.
<b>NV</b> Nevada	<a href="#">Executive Directive 011, enacted 4/1/2020 / NRS 414.110</a>	Protects any "worker" from liability for death or injury, as long as they are "complying with or reasonably attempting to comply with" this chapter, except for cases of "willful misconduct, gross negligence, or bad faith." "Worker" is defined as "any full-time or part-time paid, volunteer or auxiliary employee of this State ... or of any agency or organization, performing services for emergency management at any place in this State subject to the order or control of ... the State Government." NRS 414.110(3).
<b>NH</b> New Hampshire	No Recent Law or Executive Order, but see N.H. Rev. Stat. § 21-P:41  <a href="#">Attorney General Op. Ltr. dated April 22, 2020</a>	New Hampshire has not enacted any new laws to provide protection to health care providers or long term care providers. Existing New Hampshire law provides that emergency management workers "shall possess the same powers, duties, immunities, and privileges the worker would ordinarily possess if performing his or her duties in the state or political subdivision in which normally employed or rendering services."  <b>Attorney General Op. Ltr:</b> The New Hampshire Attorney General has issued guidance on the question of whether assisted living facilities, long-term care facilities, nursing facilities, and residential care facilities that take steps to implement New Hampshire Executive Order 2020-04 are performing emergency management activities. The Attorney General opined that the immunity provisions of R.S.A. § 21-P:41 applies to "health facilities, and their employees and volunteers, that engage in emergency management activities, so long as the health facility complies with or reasonably attempts to comply with applicable state of emergency orders or rules."
<b>NJ</b> New Jersey	<a href="#">Executive Order No. 112, dated April 1, 2020</a>  <a href="#">S.B. 2333, dated April 14, 2020</a>	<b>Executive Order No. 112:</b> New Jersey Governor Murphy issued an Executive Order granting health care facilities professional immunity from civil liability for damages sustained in the course of providing services in support of the state's COVID-19 response. Health care facilities are defined to include ambulatory surgical facilities, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, dialysis centers, long-term care facilities, medical assistance facilities, mental health centers, paid and volunteer emergency medical services, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, skilled nursing facilities, and adult day care centers. Immunities are not extended to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.  <b>S.B. 2333:</b> Provides civil and criminal immunity to certain health care professionals and health care facilities during public health emergency and state of emergency. The law shares the same definition for health care facilities as the Executive Order dated April 1, 2020. Health care professionals and health care facilities are immune from civil liability for civil damages for injury or death sustained as a result of their acts or omissions in the course of providing medical services in support of the state's COVID-19 response. Such immunities do not extend to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct. The law also provides immunity from civil or criminal liability for health care facilities and health care providers for injuries or deaths resulting from as a consequence of the allocation of scarce medical resources, if the health care facility adopts a "scarce critical allocation policy." Immunities under the law remain in place until the state of emergency is rescinded.

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<p><b>NM</b> New Mexico</p>	<p>No recent action</p>	
<p><b>NY</b> New York</p>	<p><a href="#">Senate Bill 7506B</a> (as of 6.11.20, state Assembly members seeking to retroactively repeal this provision)</p> <p><a href="#">Senate Bill S8835</a></p> <p><a href="#">Executive Order No. 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency</a></p>	<p><b>Senate Bill 7506B:</b> Any health care facility or health care professional shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services, if: (a) the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law; (b) the act or omission occurs in the course of arranging for or providing health care services and the treatment of the individual is impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and (c) the health care facility or health care professional is arranging for or providing health care services in good faith.</p> <p>The immunity provided by the above shall not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or health care professional providing health care services, provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.</p> <p>The term "health care facility" means a hospital, nursing home, or other facility licensed or authorized to provide health care services for any individual under article twenty-eight of this chapter, article sixteen and article thirty-one of the mental hygiene law or under a COVID-19 emergency rule.</p> <p>Effective March 7, 2020 through April 3, 2020, "health care services" means services provided by a health care facility or a health care professional, regardless of the location, where those services are provided, that relate to: (a) the diagnosis, prevention, or treatment of COVID-19; (b) the assessment or care of an individual with a confirmed or suspected case of COVID-19; or (c) the care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency declaration.</p> <p><b>Senate Bill S8835:</b> Effective August 3, 2020 and until the expiration of the COVID-19 emergency declaration (unless amended), the term "health care services" means services provided by a health care facility or a health care professional, regardless of the location where those services are provided, that relate to: (a) the diagnosis or treatment of COVID-19; or (b) the assessment or care of an individual as it relates to COVID-19, when such individual has a confirmed or suspected case of COVID-19.</p> <p><b>Executive Order No. 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency:</b> Provides that all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses shall be immune from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional.</p>

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>NC</b> North Carolina	<a href="#">Executive Order No. 130, enacted April 8, 2020</a>  <a href="#">Senate Bill 704 at Section 3D.7.(a), enacted May 4, 2020</a> “Health Care Liability Protection for Emergency or Disaster Treatment”	<p><b>Executive Order No. 130:</b> Provides that “all persons participating in a response authorized by the State Director of Emergency Management to an EMAC request” shall be considered “state emergency management workers” and shall not be liable for “any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used in connection with an attempt to render aid.” Good faith “does not include willful misconduct, gross negligence, or recklessness.”</p> <p><b>Senate Bill 704 at Section 3D.7.(a):</b> Provides that health care providers “shall have immunity from any civil liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services” if three conditions apply:</p> <ol style="list-style-type: none"> <li>1. The provider “is arranging for or providing health care services during the period of the COVID-19 emergency”.</li> <li>2. “The arrangement or provision of health care services is impacted, directly or indirectly” by decisions or activities in response to or as a result of the COVID-19 pandemic.</li> <li>3. The provider “is arranging for or providing health care services in good faith.”</li> </ol> <ul style="list-style-type: none"> <li>• Coverage includes long-term care providers</li> </ul>
<b>ND</b> North Dakota	No recent action	
<b>OH</b> Ohio	No recent action, but see <a href="#">OH Rev. Code § 2305.231</a> ; <a href="#">Ohio House Bill 606</a> ; and <a href="#">Ohio Senate Bill 308</a>	<p>A health care provider, which likely includes hospitals and may include long-term care facilities, that provides emergency medical services or emergency professional care as a result of a disaster, “is not liable in damages to any person in a tort action for injury, death, or loss to person or property that allegedly rises from an act or omission of the health care provider ... in the health care provider’s ... provisions of those services or that treatment or care if that act or omission does not constitute reckless disregard for the consequence a to affect the life or health of the patient.”</p> <p>Both the state house and state senate bills would provide qualified immunity to hospitals, skilled nursing facilities, and residential care facilities, absent willful misconduct, for actions arising out of COVID-19 treatment.</p> <p>Ohio’s Good Samaritan statute applies to long-term care facilities.</p>
<b>OK</b> Oklahoma	<a href="#">Third Amended EO 2020-13; O.S. § 76-5.9</a>  Enacted <a href="#">Oklahoma Senate Bill 300</a>	<p>Providers and facilities that render emergency care or assistance during the public health emergency “shall not be liable for damages resulting from the rendering of emergency care, aid, shelter or assistance unless the damage was caused by the gross negligence or willful or wanton misconduct of the individual or entity rendering the emergency care, aid, shelter or assistance.”</p> <p><b>Oklahoma Senate Bill 300:</b> The enacted bill provides for civil immunity of hospitals, adult day care, and skilled nursing facilities, among others “... for any loss or harm to a person by an act or omission by the facility or provider that occurs during the COVID-19 public health emergency ...” so long as the act or omission did not result from the provider’s or facility’s “willful or wanton misconduct” in providing services in connection with treatment for COVID-19. The bill is effective through October 31, 2020.</p>
<b>OR</b> Oregon	ORS § 401.667	After the declaration of a state of emergency, Oregon’s code extends liability protections to some facilities and providers if 1) providers have registered as an “emergency health care provider” under ORS § 401.654 and have received specialized training; 2) a health care facility is designated as an emergency health care facility or emergency health care center that has adopted emergency operations plans and credentialing. A “health care facility” includes hospitals, long-term care facilities, and extended stay centers under ORS § 442.015.



State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>PA</b> Pennsylvania	<a href="#">Executive Order, dated May 6, 2020</a> (as of 6.8.20, state legislature seeking to enact additional protections)	Pennsylvania Governor Wolf issued an Executive Order designating any individual licensed, certified, registered, or otherwise authorized to provide health care services at health care facilities, nursing facilities, personal care homes, assisted living facilities, alternate care sites, community-based testing sites, and non-congregate care facilities engaged in emergency or disaster services activities as agents of the Commonwealth for purposes of immunity from civil liability. The liability immunity outlined by the order applies to “liability due to emergency services activities or disaster services activities only as related to the Commonwealth’s COVID-19 response.” The order provides that such immunities do not extend to cases of willful misconduct or gross negligence. The order also makes clear that the immunities extend only to the individuals and not the facilities themselves.
<b>RI</b> Rhode Island	<a href="#">Executive Order No. 20-21, dated April 10, 2020</a>	Rhode Island Governor Raimondo issued an Executive Order providing immunity from liability pursuant to R.I. Gen. Laws § 30-15-15(a), for injury or death to any disaster response workers, including hospitals, nursing facilities, and community-based health care providers and their agents. The order excludes immunity for injuries and deaths resulting from patient care provided to patients who do not have COVID-19 and whose care is not impacted by the COVID-19 pandemic. The immunity granted under the order does not provide immunity in cases of willful misconduct, gross negligence, or bad faith.
<b>SC</b> South Carolina	No recent action	South Carolina has not implemented COVID-specific liability limitations, but existing law provides that healthcare providers appointed by the State Department of Health pursuant to the Emergency Health Powers Act “must not be held liable for any civil damages as a result of medical care or Treatment ... related to the appointment of the health care provider and the prescribed duties unless the damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient.” See <a href="#">SC Code § 44-4-570</a> . On March 13, 2020, Governor Henry McMaster declared a state of emergency due to COVID-19, which triggered the Emergency Health Powers Act (EHPA). See <a href="#">EO 2020-08</a> .  • Coverage applies to healthcare providers appointed by the State Department of Health as defined above.
<b>SD</b> South Dakota	No recent action	
<b>TN</b> Tennessee	No recent action, but see <a href="#">Tenn. Code § 58-2-107</a>	Tennessee Code § 58-2-107 provides that, if the Governor declares an emergency in response to a major disaster, voluntary health care providers, including hospitals participating in the Emergency Management Assistance Compact or the Southern Regional Emergency Management Assistance Compact, are immune from liability in providing health care to victims, as long as the services are provided within the limits of the provider’s license, certification, or authorization, unless an act or omission was the result of gross negligence or willful misconduct. On March 12, 2020, the Tennessee governor declared a state of emergency. This statute is not specific to COVID-19.
<b>TX</b> Texas	No recent action	Although the Texas governor has not issued an Executive Order regarding qualified immunity of hospitals or long term care facilities, the Texas Medical Association and Texas Hospital Association have <a href="#">requested</a> a temporary extension of the <a href="#">Texas Good Samaritan law</a> , which applies generally to care rendered in emergencies, to cover treatment provided in response to COVID-19 specifically.
<b>UT</b> Utah	<a href="#">Enacted Utah Senate Bill 3002</a>	The enacted bill provides immunity to hospitals, hospices, nursing care facilities, and assisted living facilities (which likely include long-term care facilities) for harm resulting from any act or omission in the course of providing health care during the declared public health emergency, absent gross negligence or malicious conduct.

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
	<a href="#">Addendum 9 To Executive Order 01-20</a>	<p>The Amendment to the Executive Order clarifies that under protections afforded by <a href="#">20 V.S.A. § 20</a>, health care facilities, health care providers, and health care volunteers would be immune from civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, except in the case of willful misconduct or gross negligence.</p> <p>“Health Care Facilities” means State licensed nursing homes (as defined in 33 V.S.A. § 7102(7)) and Middlesex Therapeutic Community Residence, all State licensed assisted living residences (as defined in 33 V.S.A. §7102(1)), Level III residential care homes (33 V.S.A. 7102(10)(A)), intermediate care facilities for individuals with intellectual disability (ICF/ID) (42 C.F.R. § 440.150), all State therapeutic community residences (as defined in 33 V.S.A. § 7102 (11)), Level IV residential care homes (33 V.S.A. § 7102 (10)(B)), all hospitals (as defined in 18 V.S.A. § 1902) and all alternate or temporary hospital sites and other isolation, quarantine or housing sites designated by the Commissioner of PSD/VEM for the treatment of, or alternate shelter for those who have been exposed to or infected with COVID-19.</p> <p>For Health Care Facilities and Health Care Providers, an emergency management service or response activity, includes, but may not be limited to:</p> <ol style="list-style-type: none"> <li>1. Expedited postponement of non-essential adult elective surgery and medical and surgical procedures, including dental procedures, in the safest but most expedient way possible, as ordered by Addendum 3 of the Executive Order, if elective surgeries and medical and surgical procedures are performed at the Health Care Facility or by the Health Care Provider;</li> <li>2. Canceling or denying elective surgeries or procedures or routine care to the extent determined necessary for the health, safety and welfare of a patient or as necessary to respond to the COVID-19 outbreak;</li> <li>3. Redeployment or cross training of staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 outbreak;</li> <li>4. Planning, or enacting, crisis standard-of-care measures, including, but not limited to, modifying numbers of beds, preserving PPE, and triaging access to services or equipment as necessary to respond to the COVID-19 outbreak; and</li> <li>5. Reduced record-keeping to the extent necessary for Health Care Providers to respond to the COVID-19 outbreak.</li> </ol>

State	Legislative or Executive Order	Relevant Text / Notes <sup>1</sup>
<b>VA</b> Virginia	<a href="#">Executive Order No. 60, enacted April 28 2020</a>	<p>Entitled “Clarification of certain immunity from liability for healthcare providers in response to Novel Coronavirus (COVID-19)”—explicitly extends certain existing immunity protections to COVID-19. It states that “Sections <a href="#">8.01-225.01</a> and <a href="#">8.01-225.02</a> of the Code of Virginia provide certain liability protection to healthcare providers during a state of emergency” and notes that “[i]t is apparent that in enacting these provisions, the General Assembly intended to afford healthcare providers immunity from certain liability in exactly the circumstances presented by the COVID-19 health crisis.”</p> <p>The Executive Order clarifies that:</p> <ul style="list-style-type: none"> <li>• “Health care provider” includes “healthcare providers providing healthcare in response to the COVID-19 health emergency.”</li> <li>• “Responds to a disaster” includes, “temporary withholding of the provision of procedures, consultations or surgeries performed in an inpatient or outpatient surgical hospital ... , free-standing emergency department or endoscopy center, physicians’ office, or dental, orthodontic, oral surgeon, or endodontic offices that require PPE, the delay of which was not anticipated to cause harm to the patient by negatively affecting the patient’s health outcomes, or leading to disability or death.”</li> <li>• And “[e]mergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency” shall be deemed to include but is not limited to: (i) insufficient availability of PPE, ventilators, or other drugs, blood products, supplies or equipment; (ii) insufficient availability of trained staff; (iii) having licensed healthcare professionals deliver care that, while included in the scope of their licensure, exceeds the scope of their credentials at the hospital or other health care facility at which they deliver services or exceeds the scope of the services that they normally provide; (iv) implementation or execution of triage protocols or scarce resource allocation policies necessitated by healthcare provider declaration of crisis standards of care; and (v) using supplies or equipment in innovative ways that are different from the way that these supplies and equipment are normally used.”</li> <li>• Coverage for “health care providers” as defined in § 8.01-581.1.</li> </ul>
<b>WA</b> Washington	RCW § 70.15.110 – “Uniform Volunteer Emergency Health Practitioner Act”	Protects only volunteers who do not receive compensation from liability, except for gross negligence or willful or wanton misconduct. Washington state medical workers have requested to extend this protection to paid medical providers, but Washington has not done so.
<b>WV</b> West Virginia	No recent action	
<b>WI</b> Wisconsin	<a href="#">Wisconsin Act 185</a>	Provides immunity to any health care professional, health care provider, or employee, agent, or contractor of a health care professional or health care provider during the state of emergency declared for the COVID-19 pandemic. Immunity is for provision of health care service, in the event of death of or injury to any individual. The services must be provided in good faith, and not wanton conduct or intentional misconduct.
<b>WY</b> Wyoming	No recent action	While Wyoming has not taken recent action with respect to qualified immunity of hospitals and long-term care facilities, <u>if the health care provider follows instructions of the state health officer initially</u> , then subsequently, under WY Stat. § 35-4-114, the “health care provider or other person who in good faith follows the instructions of the state health officer in responding to the public health emergency is immune from any liability arising from complying with those instructions ... This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.” The health care provider likely must first act under the affirmative instructions of Wyoming’s state health officer before this statute applies.



<sup>1</sup> In using this Survey, there are several important factors to keep in mind.

First, the liability protections for health care providers, when available, can be found in executive orders declaring a disaster, agency guidance for health care providers, enacted and proposed legislation and/or current immunity laws. Providers should note the source of the law as it could impact the protection provided.

Second, the facilities and professionals receiving protection can vary by state. In this regard, the law may generally protect “health care providers” or may specify the types of facilities and professionals protected, either in the law itself, or through reference to an existing licensing statute or regulation. In compiling the survey, we listed long-term care and senior/assisted living facilities when directly or indirectly referenced in the law providing immunity; laws without these references may also provide protection depending on how applied. In addition, a licensed professional’s immunity may be limited to clinical activities or may also include executive or administrative activities.

Third, States vary in the scope of activity protected. Some are limited to specific conduct, e.g., use of personal protective equipment (PPE), others are more general and protect any activity related to COVID-19, still others protect any activity in response to the emergency which could include treatment of non-COVID patients. In this regard, some States require action by the government and/or the provider in order to trigger the protection. Given the nature of these orders and the ever-changing landscape of the situation, the scope of protected activity could be a moving target and providers are encouraged to take a conservative approach when gaging the liability risks of certain activities.

Fourth, although the duration of the protections are generally limited to the duration of the declared emergency, some emergency declarations are open-ended, while others have expiration dates and must be renewed. While it is unlikely any emergency declaration will terminate in the near future, renewals should not be taken for granted.

As a final note, these laws provide qualified immunity and, therefore, do not protect gross negligence, willful misconduct, or criminal acts.



“Seyfarth” and “Seyfarth Shaw” refer to Seyfarth Shaw LLP, an Illinois limited liability partnership. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA, and is authorized and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership. Our Hong Kong SAR office, “Seyfarth,” is a registered foreign law firm operated by its sole registered foreign lawyer in association with Wong, Wan & Partners.