

## Illinois Governor Signs Executive Order Limiting Liability for Health Care Providers

By Christina Kuta

On April 1, 2020, Illinois Governor J.B. Pritzker signed Executive Order 17 in response to the COVID-19 pandemic (Order). This Order, pursuant to the Governor's authority under the Illinois Emergency Management Agency Act (20 ILCS 3305/6), restricts civil liability for "health care facilities," "health care professionals" and "health care volunteers" providing services during the Governor's current Disaster Proclamation.

The Order provides that Illinois health care facilities, health care professionals and health care volunteers are "immune from civil liability for any injury or death alleged to have been caused by any act or omission by . . . which injury or death occurred at a time when . . . rendering assistance to the State by providing health care services in response to the COVID-19 outbreak . . ." For purposes of the Order, "health care facility" includes hospitals, ASCs, skilled nursing facilities, mental health facilities, development disability facilities, government-operated facilities established due to the COVID-19 pandemic, VA facilities, community-integrated living arrangements and FQHCs. A "health care professional" is a licensed health care provider providing services (i) in a health care facility in response to the COVID-19 pandemic; or (ii) at the direction of the Illinois Emergency Management Agency (IEMA) or Illinois Department of Public Health (IDPH) in response to the Disaster Proclamation. A "health care volunteer" is a volunteer or medical or nursing student who is not a licensed health care worker and is providing services (i) in a health care facility in response to the COVID-19 pandemic; or (ii) at the direction of the IEMA or IDPH in response to the Disaster Proclamation.

Immunity from civil liability for these entities and individual providers applies only when "rendering assistance" in support of Illinois' response to the COVID-19 pandemic. For health care facilities, they are deemed to be rendering services through, for example, actively cancelling or postponing elective procedures, increasing the number of hospital beds, preparing to treat COVID-19 patients or preserving personal protective equipment. For health care professionals and volunteers, rendering assistance means providing services in response to the COVID-19 pandemic in a health care facility or at the direction of IEMA or IDPH.

This Order is intended to limit exposure for health care facilities and providers rendering services in historically untested conditions. Health care providers often must engage in quick-decision, life or death choices in response to this pandemic, and through with this Order, can do so without concern they later will be sued for such actions. However, to the extent a health care facility or provider engages in grossly negligent or willful misconduct, such actions or inactions shall not be exempt from civil liability, affording patients the right to file suit in these instances.

As of now, the Order is expected to terminate on April 30, 2020, but likely will be extended should the Disaster Proclamation extend beyond that date. The health law attorneys at Roetzel & Andress will provide updates in future alerts and are available to address those questions and concerns health care providers are facing during the COVID-19 pandemic.

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