

Governor Wolf Signs Executive Order Providing Limited Immunity to Healthcare Providers

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Healthcare Alert

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In response to calls from groups to protect Pennsylvania's frontline healthcare providers, Governor Wolf signed an Executive Order "to enhance the protections for health care providers" during the COVID-19 health crisis. The Order, effective as of May 6, 2020 and for the duration of Pennsylvania's emergency proclamation, affords individual healthcare providers immunity from civil lawsuits for services related to the Commonwealth's COVID-19 disaster emergency response.

Per the Order, individual physicians and other licensed and certified healthcare providers are designated limited "agents" of the Commonwealth for the purposes of immunity only. Providers are immune from civil liability, except for willful misconduct or gross negligence, if they meet the following criteria:

- providing "emergency services" or "disaster services" related to the "Commonwealth's COVID-19 disaster emergency response pursuant to [Governor Wolf's] March 6, 2020 Proclamation of Disaster Emergency";
- those covered services are provided in a hospital, a home healthcare agency, a home care agency, a hospice, a long-term care nursing facility, cancer treatment centers using radiation therapy on an ambulatory basis, an ambulatory surgical facility, a birth center, an alternative care site, community-based testing site or non-congregate care facility; and
- the hospital or other covered health facility where the individual provider is providing services is engaged in "emergency services" or "disaster services" related to the "Commonwealth's COVID-19 disaster emergency response pursuant to [Governor Wolf's] March 6, 2020 Proclamation of Disaster Emergency".

The Order specifically carves out hospitals and entities, stating only the "individual" providers, and "not the facilities or entities themselves," are afforded immunity under the Order. Furthermore, the Order states that there is no immunity for "non-COVID-19 medical and health treatment or services to individuals." There is no reference in the Order to manufacturers of medical supplies or manufacturers of non-medical products who retooled factories to produce medical supplies to address shortages.

The Order raises some questions that require further review and analysis. None of the key terms in the Order, such as "emergency services," "disaster services" and "related to the Commonwealth's COVID-19 disaster emergency response" are defined within the Order. Given the specific carve out for "non-COVID-19 medical and health treatment," it is not entirely clear whether providers' whose treatment plans and services have been directly impacted by the COVID-19 crisis and orders requiring the delay of certain procedures and treatments are immune. Furthermore, it is unclear if primary care physicians, both single offices and those part of larger healthcare systems, are granted immunity. We will continue to review and monitor these, and other issues, raised by the Order and any further related legalization. For now, at least some healthcare providers risking their lives to save those of Pennsylvania residents have some protection from civil lawsuits.

If you have questions or would like additional information, please contact Kevin C. Cottone (cottonek@whiteandwilliams.com; 215.864.7108), Michael H. Horner (hornerm@whiteandwilliams.com; 856.317.3658), Andy Ralston (ralstona@whiteandwilliams.com; 610.782.4908), Patti Luczak (luczakp@whiteandwilliams.com; 215.864.6801), Jason Poore (poorej@whiteandwilliams.com; 215.864.6806) or another member of the Healthcare Group.

As we continue to monitor COVID-19, White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.

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