



To: Sen. Wilborn, Chair and Members, Senate Judiciary Committee

Date: May 18, 2020

RE: Liability protections for health care providers in Kansas

LeadingAge Kansas is the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

We are writing this letter in support of the proposal to provide liability protections for health care providers during this national state of emergency. The protections are narrowed to only those health care activities related to the COVID-19 emergency, and do not apply to acts, omissions or decisions that result in gross negligence or willful and reckless conduct. The liability protections being presented to the committee will preserve the ability to go after actual bad actors, while allowing all of the other adult care homes striving to do their best to continue doing so without the constant threat of litigation that drains precious resources away from resident care.

Long-term care providers are doing their part every day to aggressively prevent and mitigate the spread of COVID-19, as we deliver compassionate care under challenging circumstances. We grieve for every older adult who has succumbed to this deadly virus. So do the dedicated caregivers who work inside our state's nursing homes. These nurses, aides, housekeepers, cooks, and other workers don't appear on camera or in newspapers. But they are hurting. They grieve every time this virus takes away an older adult whom they have served, and to whom they have grown close, over many years. They feel called to help residents fight this virus so they can continue living meaningful lives long after this pandemic becomes a distant memory. In light of this dedication, it is disappointing to see the blame of nursing homes for coronavirus deaths. That blame is misplaced and unfair.

The long-term care system was in crisis long before the COVID-19 pandemic started. We have sounded the alarm at the legislature for years about the workforce crisis in long term care,

fueled by poor Medicaid funding that leaves us unable to compete with even retail and fast food employers. Our providers are putting forth heroic efforts to care for older Kansans while our funding and workforce shortages continue to explode. Adult care homes have very little testing, and the vast majority lack adequate personal protective equipment for residents and staff. They have no priority access to masks, and no ability to compete for them on the open market. Nursing homes already on the financial brink are facing an extra \$240,000 a month in costs to care for one COVID-19 positive resident in their building. If the virus spreads, the home must find an additional \$640,000 a month to properly treat and contain the virus. Those financial resources do not exist, and we have received no promises that aid will be coming.

Nursing homes have been in lockdown for over a month, perform symptom checks on residents and staff every day, and push their infection control programs into overdrive. What no one wants to acknowledge is that lockdowns and symptom screenings only take us so far. A high percentage of the virus is spread by people who have no symptoms or have yet to show symptoms, especially in the elderly population. This means that despite their best efforts, nursing homes catch COVID-19 infections in their building when it's already too late.

There are many reasons, documented by experts, why COVID-19 spreads so quickly within nursing homes. By design, these care settings are home to a high concentration of older adults with serious underlying health conditions who live in a communal environment and require hands-on assistance with basic activities of daily living like dressing and bathing. This combination of factors helps the coronavirus spread and makes the virus extremely challenging to control, even for nursing homes that have honed their infection-control and prevention protocols during scores of influenza seasons.

Nursing homes also face additional challenges that are out of our control:

- We need personal protective equipment—including masks, gowns, and gloves—so we can keep our residents and caregivers safe.
- We need access to critical testing tools that would help us identify and isolate staff and residents who have been exposed to the virus.
- We need adequate funding that actually covers the true cost of the care we provide.

This trifecta of need—for equipment, testing, and funds—has put nursing homes at a distinct disadvantage during this health emergency. We simply haven't been given the tools we need to fight COVID-19.

The coronavirus pandemic is a clarion call for change. Now is the time to support nursing homes, give them the resources they sorely lack, and recognize their important role in the health care system. That includes providing them the same protections that every other

health care provider needs during this heartbreaking time.

We have attached to this letter a list of state actions for limiting health care provider liability related to COVID-19. You will note that of the 26 states that have enacted COVID-19 specific liability limits, all have included long term care providers.

Please do not hesitate to contact me with any questions.

Respectfully,

A handwritten signature in black ink that reads "Debra Harmon Zehr". The signature is written in a cursive, flowing style.

Debra Zehr, President/CEO
LeadingAge Kansas

COVID-19: STATE ACTIONS FOR LIMITING HEALTH CARE PROVIDER LIABILITY¹

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|---------|---|---|
| Alabama | Proclamation March 13, 2020 , at Section I, enacted 3/13/2020 | Enacts alternative standards of care for health care facilities, including long term care providers, and extends State officer immunity to providers by declaring health care professionals to be “emergency management workers.” |
| Alaska | Senate Bill 241 – Extending COVID-19 Declaration / Relief , enacted 4/10/2020 | Declares that, except in cases of gross negligence, recklessness, or intentional misconduct, public health agents or health care providers who take action based on a standing order issued by the chief medical officer in the Alaska Department of Health and Social Services, are not liable for civil damages resulting from an act or omission in implementing the standing order. Health care providers are defined as “any person that provides health care services,” and specifically includes hospitals, medical clinics or office, special care facilities, and medical laboratories. Because the immunity protections are only activated when the chief medical officer in the Alaska Department of Health and Social Services issues a standing order, this provision is not self-effectuating, and additional state action must be taken before the immunities apply. |
| Arizona | Executive Order 2020-13 , enacted 3/23/2020 Executive Order 2020-27 , enacted 4/9/2020 | Establishes, at “Whereas” 26, citing A.R.S. § 36-790(B), that a person or health care provider undertaking any activity required by the Enhanced Surveillance Advisories and Public Health Emergencies provisions of the Arizona Code, including reporting, is immune from civil or criminal liability if the person or provider acted in good faith. Entitled “The ‘Good Samaritan’ Order Protecting Frontline Healthcare Workers Responding to the COVID-19 Outbreak,” this Executive Order |

¹ This chart identifies information available as of May 14, 2020. Please note that it is not intended to be an exhaustive list of all limits, immunities, considerations, and guidelines in each state, and confirmation of such is recommended, as states may change their laws and guidelines over time and without notice.

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|--------------------------|---|---|
| | | <p>establishes that licensed health care professionals, registered volunteer health professionals, licensed EMTs, licensed health care institutions (including long term care providers), and a health care institution's agents, officers, employees, representatives, or volunteers, are presumed to have acted in good faith and are immune from civil liability for actions taken in the course of providing medical services in support of the state's public health emergency. This liability protection does not provide immunity from civil liability for care involving gross negligence or reckless or willful misconduct (including services rendered under the influence of alcohol or drugs).</p> |
| <p>Arkansas</p> | <p>Executive Order 20-18, enacted 4/13/2020</p> | <p>Expands the definition of "emergency responder" to provide immunity from liability to physicians, physicians' assistants, specialist assistants, nurse practitioners, and registered and practical nurses for any injury or death alleged to have been sustained directly 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. Health care facilities are similarly protected for planning or implementing crisis standards of care protocols. Said immunity does not extend to providers acting with gross negligence, willful misconduct, or bad faith.</p> |
| <p>California</p> | <p>No formal state action</p> | <p>While no specific action has been taken as of this time in response to the COVID-19 pandemic, existing California law, Government Code § 8659, provides civil liability protections to physicians, pharmacists, respiratory care therapists, and dentists rendering services during state of emergency. Hospitals are the only institutional entities covered by the existing law. This immunity does not apply in the event of a willful act or omission.</p> |
| <p>Colorado</p> | <p>No formal state action</p> | <p>While Colorado has not implemented any specific action to limit provider liability in response to COVID-19, the state has implemented Crisis Standards of Care for EMS and PPE Allocation, as a triage system to be</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------------------|--|---|
| | | utilized if a <u>hospital</u> cannot adequately care for everyone who presents for care and treatment. |
| Connecticut | Executive Order 7V , at ¶ 6, enacted 4/7/2020 | Provides that any health care facility, including nursing homes, and any health care professional “shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual’s or health care facility’s acts or omissions undertaken in good faith while providing health care services in support of the State’s COVID-19 response....” This Executive Order specifically included immunity from liability for “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 and which resulted in the damages at issue....” |
| Delaware | No formal state action* | While Delaware has not implemented any specific action to limit provider liability in response to COVID-19, existing Delaware law, Del. Code Ann. Tit. 20, § 3144 , provides that, during a state of emergency, any “person, firm, or corporation (or any employee or agent thereof)” who renders assistance or advice at the request of the state is to be considered a public employee for purposes of sovereign immunities. *Delaware issued, on 3/24/2020, a Joint Order of the Department of Health and Social Services and the Delaware Emergency Management Agency establishing that out-of-state health care providers, health care providers with inactive licenses, and others who provide health care services during the COVID-19 public health emergency are considered “public health employees,” including for purposes of liability protections and state indemnification. |
| District of Columbia | D.C. Act 23-283, The COVID-19 Supplemental Corrections | Specifically extends the existing District of Columbia law related to public health emergencies, D.C. Code Ann. § 7-2304.01 , to the COVID-19 public |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------------|--|--|
| | <u>Emergency Amendment Act of 2020</u> , enacted 4/21/2020 | health emergency, and allows for potential Mayoral action (which has not yet occurred) that would exempt licensed health care providers from civil liability for any actions taken within the scope of the provider’s employment or voluntary service to implement the District’s response plan during the public health emergency. Because the immunity protections are only activated when the Mayor issues an additional executive order to invoke these protections, this provision is not self-effectuating, and additional District action must be taken before the immunities apply. |
| Florida | No formal state action | |
| Georgia | <u>Executive Order 04.14.20.01</u> , enacted 4/14/2020 | Provides that employees, staff, and contractors of health care institutions and medical facilities are to be considered auxiliary emergency management workers for purposes of immunity protections, and provides that services provided or performed by health care institutions and medical facilities, including long term care facilities, are to be considered auxiliary emergency management activities for purposes of immunity protections. Immunity does not apply in cases involving “willful misconduct, gross negligence, or bad faith.” |
| Hawaii | <u>Executive Order No. 20-05</u> , enacted 4/16/2020 | Declares that health care facilities, health care professionals, and health care volunteers who, in good faith, comply with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons or property that occurred at a time when the facility or provider or volunteer was engaged in the course of rendering assistance to the state by providing health care services in response to the COVID-19 outbreak, unless the care or treatment involved willful misconduct, gross negligence, or recklessness. Because the immunity protections are only activated when providers are in compliance with state and federal orders that have been issued regarding the disaster emergency, this provision is not self-effectuating, and additional action must be taken before the immunities apply. |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------|--|--|
| | | Existing Hawaii law, at Haw. Rev. Stat. § 315-20 , also provided liability immunities to providers and facilities in response to collaborative assistance in control of disease outbreaks. |
| Idaho | No formal state action | While Idaho has not implemented any specific action to limit provider liability in response to COVID-19, existing Idaho law, Idaho Code § 39-1391c , immunizes licensed physicians and surgeons, as well as hospitals, from liability for emergency medical or surgical care and treatment taken in good faith and without gross negligence. |
| Illinois | Executive Order 2020-19 , enacted 4/1/2020 | Establishes that health care facilities and health care professionals, specifically including long term care facilities and providers, “shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission [of the long term care facility or the long term care professional]...in the course of rendering assistance...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” |
| Indiana | No formal state action | Although Indiana has not implemented any specific action to limit provider liability in response to COVID-19, existing Indiana law, Indiana Code § 34-30-13.5 , provides immunities for persons, including facilities, providing services in a disaster, with exceptions for gross negligence and willful misconduct. The Guidance Concerning Liability for Healthcare Providers and Facilities , as issued by the Indiana State Department of Health and Governor on 4/3/2020, indicates that “healthcare services” is defined broadly for purposes of this immunity, and that the referenced Code provision “applies to any facility [including long term care facilities and even “non-facility locations”] that provides health care services by a professional licensed under Indiana state law or the law of another state |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|-----------|---|--|
| | | and the provision of care is in response to and during the COVID-19 emergency declaration.” |
| Iowa | PPE Shortage Order , issued by the Iowa Department of Public Health, 4/9/2020 | Provides that existing immunity protections, Iowa Code § 135.147 , extend to health care providers, hospitals, and health care facilities, including long term care facilities, who are acting in compliance with the PPE Shortage Order or in good faith related to optimizing PPE supply. |
| Kansas | Executive Order No. 20-26 , issued 4/22/2020 | Establishes that health care providers, including licensed professionals and unlicensed volunteers, as well as entities and facilities, including adult care facilities, “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, rendered in response to any Kansas Department of Emergency Management mission related to the COVID-19 outbreak...shall be deemed immune from suit...unless it is established that any adverse event or injury was caused by the willful misconduct, gross negligence, recklessness, or bad faith of such facility or health care provider.” |
| Kentucky | Kentucky Senate Bill 150 , signed 3/30/2020 | Provides that a health care provider, including entities and long term care facilities, “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.” |
| Louisiana | No formal state action* | While Louisiana has not implemented any specific action to limit provider liability in response to COVID-19, existing Louisiana law, Louisiana Rev. Stat. § 29:771 , addresses provider liability immunities during public health emergencies. This statute provides, “During a state of public health emergency, any health care providers shall not be civilly liable for causing |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|-------|---------------------------------|--|
| | | <p>the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.” The definition of “health care provider” under Louisiana law “includes but is in no way limited to inpatient hospitals, nursing homes, home health agencies, and ambulatory surgical centers.”</p> <p>*We note that the Louisiana Attorney General issued, on 4/7/2020, a Memorandum regarding health care provider immunities and comparing the existing Louisiana protections to the New York Executive Order providing immunities to health care providers. The Order stated, “A health care provider should be immune from a claim for civil liability during a state of public health emergency, provided that the provider does not act grossly negligent or does not engage in willful misconduct.” According to the Louisiana Attorney General, the language in the New York Executive Order is similar to that which is in the existing Louisiana statute: “The language in the New York executive order does not appear to give any greater immunity than is currently provided under Louisiana law. In some ways, the New York executive order is more limited. First, it applies only to actions against six categories of health care providers – physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses, and licensed practical nurses. Secondly, immunity is available only if the medical professional was ‘in the course of providing medical services in support of the state’s response to the COVID-19 outbreak’. Third, the immunity provision does not extend to actions for property damage.” The Louisiana Attorney General further notes that “any changes to the current immunity statutes, either through an executive order or through a statute, in an attempt to apply expand [<i>sic</i>] immunities retroactively will likely be declared unconstitutional, just as done in post-Katrina and post-Rita cases.”</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|---------------|--|--|
| Maine | No formal state action | While Maine has not implemented any specific action to limit provider liability in response to COVID-19, existing Maine law, MRS Title 37-B § 784-A , establishes that all persons called and employed by the Maine Emergency Management Agency and local organizations to assist with emergency management activities, who are proceeding as directed by the Maine Emergency Management Agency and local organizations, shall be deemed an employee of the state for purposes of immunity from liability. Because the immunity protections are only activated when providers are called and employed by the Maine Emergency Management Agency and local organizations to assist, as well as when providers are proceeding as directed by the Maine Emergency Management Agency and local organizations, this provision is not self-effectuating, and additional state action must be taken before the immunities apply. |
| Maryland | No formal state action | While Maryland has not implemented any specific action to limit provider liability in response to COVID-19, existing Maryland law, Maryland Public Safety § 14-3A-06 , establishes that a health care provider, including health care facilities and nursing facilities, is immune from civil or criminal liability if the provider acts in good faith and under a catastrophic health emergency proclamation. |
| Massachusetts | PREP Act Directive , with associated liability legislation , issued 4/8/2020 | Establishes that health care providers and health care facilities, including long term care facilities, “shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency, provided that “the facility or provider is arranging for or providing health care services pursuant to a COVID-19 emergency rule, the arranging for or providing care or treatment was impacted by the facility’s or the provider’s decisions or activities in response to or as a result of the COVID-19 outbreak or emergency rules”, and that the facility or provider is arranging |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|-------------------------|--|--|
| | <p>State Legislation – Senate Bill 2640, enacted 4/17/2020</p> | <p>for or providing care services in good faith. The immunity specifically does not apply to acts or omissions constituting gross negligence, recklessness, or conduct with an intent to harm.</p> <p>Provides that health care providers and facilities, including long term care facilities, “shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency.” To be protected, the facility or provider must be arranging for or providing services pursuant to a COVID-19 emergency rule “and in accordance with otherwise applicable law,” the arranging for and providing of care or treatment was impacted by the facility’s or provider’s decisions or activities in response to treatment conditions resulting from COVID-19, and the facility or the provider arranged for or provided services in good faith.</p> |
| <p>Michigan</p> | <p>Executive Order No. 2020-30, enacted 3/30/2020</p> | <p>Provides that “any licensed health care professional or designated health care facility,” including long term care facilities, “who perform activities in support of this state’s response to the COVID-19 pandemic constitute personnel of a disaster relief force..., and, with respect to such activities, are entitled to the same rights and immunities as provided by law for the employees of this state, as provided under MCL 30.411(1)(c).”</p> |
| <p>Minnesota</p> | <p>No formal state action</p> | <p>While Minnesota has not implemented any specific action to limit provider liability in response to COVID-19, existing Minnesota law, Minn. Stat. 12.61, provides that, during an emergency, “the governor may issue an emergency executive order upon finding that the number of seriously ill or injured persons exceeds the emergency hospital or medical transport capacity of one or more regional hospital systems...,” and that, “[d]uring the effective period of the emergency executive order, a responder 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</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|---------------------------|--|---|
| | | <p>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.” Because the immunity protections are only activated when the Governor issues an emergency executive order, as specifically indicated in the existing law, which has not yet been issued, this provision is not self-effectuating, and additional state action must be taken before the immunities apply.</p> |
| <p>Mississippi</p> | <p>Executive Order No. 1471, enacted 4/10/2020</p> | <p>Establishes that, pursuant to the Mississippi Emergency Management Act, “[a]ny Healthcare Professional or Healthcare Facility,” including long term care facilities, “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, screening, assessing, diagnosing, treating patients for COVID-19 or otherwise acting 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 Healthcare Professional or Healthcare Facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic.”</p> |
| <p>Missouri</p> | <p>No formal state action (to date)</p> | <p>While no specific action to limit provider liability in response to COVID-19 has been enacted to date, pending legislation, Senate Bill 662, at § 537.037, has been introduced that would immunize health care providers, including long term care facilities, from liability. This proposed Section provides, “This act provides that any health care provider, as defined within the act, who in good faith renders care in connection to the COVID-19 pandemic shall not be liable for any civil damages for any acts or omissions that occur during a period where there is in effect an executive</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|---------------|--|--|
| | | order by the Governor declaring a state of emergency unless such actions were grossly negligent or willful or wanton.” |
| Montana | No formal state action | Although Montana has not implemented any specific action to limit provider liability in response to COVID-19, existing Montana law, MT Code Ann. § 10-3-110 , provides immunities for health care professionals “who, in good faith and regardless of compensation, renders or fails to render emergency care, health care services, or first aid during a declared emergency or disaster,” establishing that such providers are “not liable for any civil damages or injury unless the damages or injury was caused by gross negligence or willful and wanton misconduct and as a result of...an act or omission arising out of activities undertaken in response to the disaster or emergency” or “any act or omission related to the rendering of or failure to render services.” |
| Nebraska | No formal state action | |
| Nevada | Executive Directive 011 , enacted 4/1/2020 | Establishes that “all providers of medical services related to COVID-19,” including long term care providers and facilities, “are performing services for emergency management subject to the order or control of and at the request of State Government and shall be afforded the immunities and protections set forth in NRS 414.110 .” |
| New Hampshire | No formal state action | While New Hampshire has not implemented any specific action to limit provider liability in response to COVID-19, existing New Hampshire law, NH Rev. Stat. § 21-P:41 , establishes that all activities related to emergency management are considered to be governmental functions, and no private corporations, organizations, or agencies, nor any emergency management worker, “shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.” |
| New Jersey | Executive Order No. 112 , enacted 4/1/2020 | Establishes that any licensed health care providers or facilities, including long term care facilities, “shall be immune from civil liability for any damages alleged to have been sustained as a result of an act or omission |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|--------------------------|--|--|
| | <p>State Legislation – Senate Bill 2333, enacted 4/14/2020</p> | <p>undertaken in good faith in the course of providing services in support of the State’s COVID-19 response.... Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.”</p> <p>Provides immunity from liability to health care professionals and facilities, including long term care facilities, for certain claims alleging injury or death during the public health emergency. This legislation establishes that health care professionals “shall not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by the health care professional in the course of providing medical services in support of the state’s response to the outbreak of coronavirus disease...and a health care facility or a health care system that owns or operates more than one health care facility shall not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by one or more of its agents, officers, employees, servants, representatives or volunteers, if, and to the extent, such agent, officer, employee, servant, representative or volunteer is immune from liability....”</p> |
| <p>New Mexico</p> | <p>No formal state action</p> | |
| <p>New York</p> | <p>Executive Order No. 202.10, enacted 3/23/2020;</p> | <p>Establishes 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,” and also relieves health care providers of “recordkeeping requirements to the extent necessary for health care</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|------------------------------|--|--|
| | <p><u>State Legislation – Senate Bill 7506B at § 3082</u>, enacted 4/2/2020</p> | <p>providers to perform tasks as may be necessary to respond to the COVID-19 outbreak.”</p> <p>Provides broad immunities to liability for health care professionals and health care facilities, including long term care facilities, “from any liability, civil or criminal, for any harm or damage 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 the services are provided pursuant to a COVID-19 emergency rule, if the act or omission occurs in the course of arranging for or providing services and the treatment of the individual is impacted by the facility’s or professional’s decisions or activities in response to or as a result of the COVID-19 outbreak, and the facility or professional is arranging for or providing the services in good faith.</p> |
| <p>North Carolina</p> | <p><u>Executive Order No. 130</u>, enacted 4/8/2020</p> <p><u>State Legislation – Senate Bill 704 at Section 3D.7.(a)</u>, enacted 5/4/2020 (to be codified at §§ 90-21.130, <i>et</i></p> | <p>Establishes 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.” The Executive Order specifies that “good faith” “does not include willful misconduct, gross negligence, or recklessness.” “Emergency management worker” is defined to include “any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services....”</p> <p>Provides that any health care facility, including long term care facilities, any health care provider, and any entity that has legal responsibility for the acts or omissions of a health care provider “shall have immunity from any civil liability for any harm or damages alleged to have been sustained as a</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------------------------|--|---|
| | <p><i>seq.</i>, and entitled the “Emergency or Disaster Treatment Protection Act”)</p> | <p>result of an act or omission in the course of arranging for or providing health care services” if the services were arranged for or provided “during the period of COVID-19 emergency declaration,” if the services were impacted directly or indirectly by activities in response to or as a result of the COVID-19 pandemic, and if the services were arranged for or provided in good faith. These immunities do not apply if the harm or damages were caused by acts or omissions constituting gross negligence, reckless misconduct, or intentional infliction of harm (and specifically noting that “acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered to be gross negligence, reckless misconduct, or intentional infliction of harm”).</p> |
| <p>North Dakota</p> | <p>No formal state action</p> | |
| <p>Ohio</p> | <p>No formal state action (to date)</p> <p>Proposed State legislation – House Bill 606, introduced 4/10/2020</p> | <p>While Ohio has not implemented any specific action to limit provider liability in response to COVID-19 to date, existing Ohio law, OH Rev. Code § 2305.2311, establishes that a health care provider, as narrowly defined, who is acting within the scope of the provider’s authority, to provide 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 as to affect the life or health of the patient.”</p> <p>In addition, proposed legislation, House Bill 606, has been introduced that would immunize all persons who provide services for essential businesses and operations from liability in a civil action for any injury, death, or loss to person or property that was caused by the transmission of COVID-19.</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------|---|---|
| Oklahoma | <p>Third Amended Executive Order 2020-13, at ¶ 23, enacted 4/20/2020</p> <p>Proposed State Legislation – Senate Bill 300, sent to the Governor for enactment on 5/6/2020 (not yet signed)</p> | <p>Extends existing Oklahoma law, 76 OK Stat. § 76-5.9, providing immunity from liability for emergency assistance provided during natural disasters or catastrophic events, to health care providers and health care facilities. Under Oklahoma law, health care facilities include long term care facilities. This Executive Order establishes that health care providers and health care facilities who render emergency care or assistance during the declared 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>Senate Bill 300, as proposed, provides that health care facilities and providers, as defined by Oklahoma law to include long term care facilities, “shall be immune from civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission by the facility or provider that occurs during the COVID-19 public health emergency” if: “1) the act or omission occurred in the course of arranging for or providing COVID-19 health care services for the treatment of the person who was impacted by the decisions, activities or staffing of, or the availability or capacity of space or equipment by, the health care facility or provider in response to or as a result of the COVID-19 public health emergency; and 2) the act or omission was not the result of gross negligence or willful or wanton misconduct of the health care facility or health care provider rendering the health care services.”</p> |
| Oregon | No formal state action | While Oregon has not implemented any specific action to limit provider liability in response to COVID-19, existing Oregon law, ORS § 401.667 , establishes that if the Governor declares a state of emergency or proclaims a state of public health emergency, emergency health care |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------------------------|--|--|
| | | <p>providers, and health care facilities that have adopted emergency operations plans and credentialing plans that govern the use of emergency health care providers, “are agents of the state...for the purposes of any claims arising out of services that are provided...pursuant to directions from a public body and that are within the course and scope of” the health care provider’s duties or the duties of the health care facility, without regard to whether the health care provider or facility is compensated for the services. Because the immunity protections only apply to specified providers whose actions are taken pursuant to directions from a public body, this provision is not self-effectuating, and additional state action must be taken before the immunities apply.</p> |
| <p>Pennsylvania</p> | <p><u>Health Care Professionals Protection Executive Order</u>, enacted 5/6/2020</p> | <p>Designates specific classes as agents of Pennsylvania “exclusively for purposes of immunity from civil liability due to emergency services activities or disaster services activities only as related to the Commonwealth’s COVID-19 disaster emergency response....” The specific classes include those with health care profession or occupation licenses, registrations, or certifications, as well as any health care facility (including any nursing facility, personal care home, and assisted living facility), engaged in emergency services activities or the provision of disaster services activities related to the COVID-19 disaster emergency response, regardless of remuneration. The Executive Order provides liability immunity to individuals for any injury or death or loss of property as a result of emergency services activity or disaster services activity, except in cases of willful misconduct or gross negligence.</p> |
| <p>Rhode Island</p> | <p><u>Executive Order 20-21</u>, enacted 4/10/2020</p> | <p>Designates all health care workers and organizations providing care at hospitals and nursing facilities to be deemed “disaster response workers” entitled to immunity. The Executive Order, however, specifically provides that it does not apply to “negligence that occurs in the course of providing</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------------|---------------------------------|--|
| | | patient care to patients without COVID-19 whose care has not been altered by the existence of this disaster emergency.” |
| South Carolina | No formal state action | While South Carolina has not implemented any specific action to limit provider liability in response to COVID-19, existing South Carolina law, SC Code § 44-4-570 , establishes that health care 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.” This provision applies if the provider does not receive payment from the state, unless otherwise employed by the state, and it applies regardless of whether the provider was paid, should have been paid, or expected payment from sources including Medicaid, Medicare, or private health insurance. Because the immunity protections only apply to providers appointed by the State Department of Health pursuant to the Emergency Powers Act, and only to care or treatment related to the appointment of the provider and the prescribed duties, this provision is not self-effectuating, and additional state action must be taken before the immunities apply. |
| South Dakota | No formal state action | |
| Tennessee | No formal state action | While Tennessee has not implemented any specific action to limit provider liability in response to COVID-19, existing Tennessee law, Tenn. Code Ann. § 58-2-107 , establishes that, if the Governor declares an emergency in response to a catastrophic or major disaster, voluntary health care providers, including hospitals and community mental health care centers, participating in the Emergency Management Assistance Compact or the Southern Regional Emergency Management Assistance Compact, are |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|---------|--|--|
| | | 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. If additional medical resources are required, the Governor, by executive order, may provide limited liability protection to health care providers, including hospitals and community mental health care centers, etc., who render services within the limits of their license, certification, or authorization to victims of such emergencies, provided that this protection may not include any act or omission caused by gross negligence or willful misconduct. With respect to paid providers, because the immunity protections are only activated when the Governor issues an executive order specifically providing liability protections, this provision is not self-effectuating, and additional state action must be taken before the immunities apply. |
| Texas | No formal state action | |
| Utah | State Legislation – Senate Bill 3002 , enacted 4/22/2020 | Provides that a health care provider is immune from civil liability for any harm resulting from any act or omission in the course of providing health care during a declared major public health emergency if the care is provided in good faith to treat a patient for the illness that resulted in the declared public health emergency or if the act or omission was the direct result of providing health care to a patient for the illness that resulted in the declared public health emergency. The act or omission of the health care provider cannot be grossly negligent or intentional or malicious conduct. |
| Vermont | Addendum 9 to Executive Order 01-20 , enacted 4/10/2020 | Provides legal immunity to health care facilities, including long term care facilities, health care providers, and health care volunteers “who are providing COVID-19 related emergency management services or response activities.” Health care facilities, providers, and volunteers are “immune from civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, except in |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|------------------------|--|--|
| | | <p>the case of willful misconduct or gross negligence.” The Executive Order establishes that, for health care facilities and providers, “an emergency management service or response activity” includes but is not limited to “expedited postponement of non-essential adult elective surgery and medical and surgical procedures;” “cancelling 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;” “redeployment or cross training of staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 outbreak;” “planning, or enacting, crisis standard-of-care measures;” and “reduced record-keeping to the extent necessary...to respond to the COVID-19 outbreak.”</p> |
| <p>Virginia</p> | <p>Executive Order No. 60, enacted 4/28/2020</p> | <p>Reinforces that certain immunity protections from liability for health care providers applicable during states of emergency, as existing in Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia, apply in response to COVID-19. “Health care provider” under Virginia law includes licensed persons, corporations, facilities, or institutions, including nursing homes. The Executive Order specifically provides that “responds to a disaster” includes, but is not limited to, “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.” In addition, “emergency 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” is defined to include, but not be</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|----------------------|---|---|
| | | <p>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.” The Executive Order reinforces that certain immunity protections from liability for health care providers for claims of “abandonment” applicable during states of emergency, resulting from the provider’s voluntary or mandatory response to the “relevant disaster” as existing in Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia, apply in response to COVID-19. The protections apply if the provider is “unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury...” The Executive Order specifically establishes that these protections “are meant to protect healthcare providers providing healthcare in response to the COVID-19 health emergency.”</p> |
| Washington | No formal state action | |
| West Virginia | No formal state action | |
| Wisconsin | <p>State Legislation – 2019 Wisconsin Act 185, at § 895.4801, enacted 4/15/2020</p> | <p>Provides that health care professionals and health care providers, including nursing homes, or employees, agents, or contractors of health care professionals or providers, are “immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following: (a) The action or omission is committed while the professional, provider, employee, agent, or contractor</p> |

BAKER DONELSON

| STATE | LEGISLATIVE OR EXECUTIVE ACTION | RELEVANT TEXT / NOTES |
|-----------------------|---------------------------------|--|
| | | <p>is providing services during the state of emergency...or the 60 days following the date that the state of emergency terminates. (b) The actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following: 1. Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared....2. Any guidance published by the department of health services, the federal department of health and human services, or any divisions or agencies of the federal department of health and human services relied upon in good faith.” To be immune, the actions or omissions cannot involve reckless or wanton conduct or intentional misconduct.</p> |
| <p>Wyoming</p> | <p>No formal state action</p> | <p>While Wyoming has not implemented any specific action to limit provider liability in response to COVID-19, existing Wyoming law, WY Stat. § 35-4-114, establishes that, during a public health emergency, “any 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 apply to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency.... This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.” Because the immunity protections are only activated when providers are following the instructions of the state health officer in responding to the public health emergency, this provision is not self-effectuating, and additional state action must be taken before the immunities apply.</p> |