

HEALTHCARE PROVIDERS COVERED UNDER CONNECTICUT COVID-19 ORDER

By: Jacqueline A. Maulucci

The unprecedented crisis caused by the COVID-19 pandemic has overwhelmed the healthcare system in the United States on many levels. Healthcare providers are working longer shifts and treating critically ill patients, while facing a reported shortage of life-saving equipment and resources. As a result, healthcare providers are being faced with difficult but increasingly unavoidable decisions that, under normal circumstances, could lead to liability for deviating from the appropriate standard of care.

To address these concerns, on April 5, 2020, [Connecticut Governor Ned Lamont](#) issued [Executive Order No. 7U](#) limiting the liability of healthcare providers while the crisis is ongoing. It is retroactive to March 10, 2020, when the emergency was first declared in [Connecticut](#). This order followed similar orders by the governors of other states including [New York](#) and [New Jersey](#). Specifically, the order grants immunity from civil liability for healthcare professionals and certain facilities assisting the state in the response to the crisis. It states:

“Notwithstanding any provision of the [Connecticut General Statutes](#), or any associated regulations, rules, policies, or procedures, any health care professional or health care facility 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, 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 and which resulted in the damages at issue, provided that nothing in this order shall remove or limit any immunity conferred by any provision of the Connecticut General Statutes or other law.”

It does not provide immunity for acts of gross negligence or willful misconduct.

This order attempts to limit liability for healthcare providers, and its language appears to set a higher bar for finding a healthcare provider liable during the crisis. However, it is unclear how this immunity will actually be applied in the coming years when cases from this time period are filed, after the crisis has ended. It is unlikely to deter plaintiffs from filing suit. Therefore, whether or not the immunity applies in a specific instance will depend upon the strength of the arguments made in defense of the immunity, and will ultimately be left to judicial interpretation on a case-by-case basis. What types of

treatment will be classified as being “undertaken because of a lack of resources, attributable to the COVID-19 pandemic?” Will outpatient and private practices outside of the hospital setting be afforded protection under the order?

The answers to these questions remain to be seen. Overall, while the order provides protection for the healthcare workers on the front lines of this crisis, it may not ultimately provide the sweeping protection providers and facilities are hoping it does.

To discuss the concerns regarding this immunity during the crisis and an analysis of potential outcomes for insurers and insureds alike, please reach out directly to [Jacqueline Maulucci](#).

Jacqueline Maulucci specializes in defending claims against medical professionals. Jacqueline has represented nursing homes, hospitals, doctors in various specialties, dentists, nurses and physical therapists in malpractice lawsuits and in administrative proceedings with the Department of Public Health.

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