

COVID-19 Healthcare Provider Protection Act of 2020

Summary

The threat of legal liability could significantly undermine the country's effort to access needed healthcare services during the COVID-19 pandemic. The CARES Act provides limited liability protections for volunteers caring for COVID-19 patients, but broader protections are needed to ensure that those on the frontline, and the facilities where critical medical care is taking place, are protected from opportunistic and unfair lawsuits.

To address these concerns, the proposed "COVID-19 Healthcare Provider Protection Act of 2020" would do the following:

Liability Protection

- Provide liability protections for both healthcare facilities and workers in lawsuits concerning the assessment, diagnosis, prevention, or treatment of COVID-19 or other care impacted by actions or decisions made in response to the COVID pandemic.
- Allow liability, without limitation, in cases where clear and convincing evidence shows that a healthcare facility or worker was grossly negligent, intended to inflict harm, engaged in willful misconduct, or intentionally committed a crime.

Procedural Implementations

- Preempt state law to the extent that there is a conflicting state law that allows for a lesser level of protection;
- Create a one-year statute of limitations, subject to enumerated tolling triggers; and
- Apply to all actions concerning covered healthcare conduct that takes place between December 1, 2019 and the later of October 1, 2024 or the expiration of a Declaration under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 issued by the Secretary of Health and Human Services.

Analysis

Definitions

- **“Health Care Services”**: Defines healthcare services to incorporate any services provided by a healthcare professional related to COVID-19, regardless of location. Additionally, it includes the care of an individual who presents to a healthcare provider during the period of a federal or state COVID-19 emergency declaration and whose care or treatment decisions or actions are impacted by COVID-19.
- **“Health Care Provider”**: Defines healthcare provider broadly to include any person, entity, or facility that provides for the assessment or care of the health of a human being.

Liability Protection

- The proposal provides liability protection to healthcare workers and facilities by raising the standard for bringing claims related to the diagnosis, prevention, or treatment of COVID-19.
 - This limited immunity would protect healthcare workers and facilities from opportunistic lawsuits.
 - This proposal ensures that individuals injured by healthcare workers or in healthcare facilities that are operating in a grossly negligent or intentionally harmful manner have recourse against such bad actors.

Procedural Protections

- **Federal preemption**: A federal minimum (or “floor”) for liability protection is implemented and applied equally nationwide. COVID-19 continues to impact every state in the Union. This provision provides baseline uniformity and predictability for healthcare workers and facilities in every state. States can still provide greater protections on top of this minimum standard.
- **Statute of limitations**: Ensures claims are made in a timely fashion (one year) and healthcare workers and facilities can continue to serve their communities into the future with a degree of predictability and certainty about their liability exposure. This also incentivizes plaintiffs to pursue claims with a reasonable degree of diligence and safeguards against evidence deterioration. This statute of limitations would be subject to tolling (i.e., pausing or delaying of the one-year period of time that one can bring a claim) for various enumerated reasons.
- **Retroactivity & sunset**: These provisions ensure liability protection is in force for the entire pandemic, including a lookback to when infections were first detected until at least October 1, 2024 or when the virus can be deemed no longer such a substantial risk as to warrant such protections. However, claims arising out of exposures during this period will continue to remain subject to the protections provided in the legislation even after the legislation sunsets.