



Federal Limits on Medical Liability Related to the COVID-19 Pandemic

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CARES ACT

In response to requests from the FMA, AMA and other organizations, Congress included a provision in the recently enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act) providing a limitation on liability for volunteer health care professionals who provide services during the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020.

This limitation on liability is provided to physicians and other health care professionals for any harm caused by an act or omission in the provision of health care services if:

- The physician is providing health care services as a volunteer during the public health emergency; and

- The act or omission occurs in the course of providing volunteer health care services that:
 - » Are within the physician's scope of practice as defined by the physician's state of licensure
 - » Do not exceed the scope of practice of a substantially similar health professional in the state in which such act or omission occurs; and
- The physician in good faith believes that the individual being treated is in need of health care services.

The limitation on liability does not apply if:

- The harm was caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the physician; or
- The physician rendered the services under the influence of alcohol or an intoxicating drug.

An additional measure of protection from liability provided by the Federal Government comes from the Secretary of the Department of Health and Human Services. On March 17, 2020 the Secretary issued a declaration, pursuant to the Public Health Service Act, that a Covered Person's activities related to medical countermeasures against COVID-19 will be immune from liability under Federal and State law.

The "health care services" subject to the limit on liability are any services rendered by a health care professional (or someone working under the supervision of the health care professional) that relate to the diagnosis, prevention or treatment of COVID-19 or the assessment or care of the health of a human being related to an actual or suspected case of COVID-19.

The services must be provided as a volunteer to qualify. The physician must not receive any compensation or thing of value for the services provided, except that items to be used exclusively for rendering health care services may be received, and the physician may accept reimbursement for travel to the site of service and payment in cash or kind for room and board, if the site of service is more than 75 miles from the physician's principal place of residence.

This limitation on liability applies to health care services provided from the effective date of the CARES Act (March 27, 2020) and for so long as the public health emergency issued on January 31, 2020 is in effect.

Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against Covid-19

An additional measure of protection from liability provided by the Federal Government comes from the Secretary of the Department of Health and Human Services. On March 17, 2020 the Secretary issued a declaration, pursuant to the Public Health Service Act, that a Covered Person's activities related to medical countermeasures against COVID-19 will be immune from liability under Federal and State law.

The term "Covered Person" has a specific meaning under federal law (the PREP Act – PHS Act 317F-3(i)(2)) and includes manufacturers, distributors, program planners and qualified persons. Most relevant for physicians is that a "qualified person" is defined as a licensed health professional or other individual authorized to prescribe, administer or dispense "Covered Countermeasures under the law of the state in which the Covered Countermeasure was prescribed, administered or dispensed.

Actions covered under the immunity provided include prescribing, administering, delivering, distributing or dispensing the "Covered Countermeasure."

A "Covered Countermeasure" is any antiviral, any other drug, any biologic, any diagnostic, any device, or any vaccine, used to treat, diagnose, cure, prevent or mitigate COVID-19 or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product.

The liability protections provide that a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure.

An example given by the Secretary of the type of protection afforded by the Declaration is that a liability claim against a health care provider who prescribes the wrong dose of a vaccine is precluded, absent willful misconduct, while the Declaration is in effect.

The Declaration was effective as of February 2, 2020, operates without geographic limitation, and extends through October 1, 2024.

To view the text of the [Declaration](#), [click here](#).

As always, if you have any questions about your legal rights or potential liability during Florida's declaration of a state of emergency or during the federal public health emergency, please contact the FMA Legal Department at legal@flmedical.org.



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