

Honorable Ronald DeSantis
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April 22, 2020

1. The proposed immunity is limited in time, as it will expire on October 1, 2020, unless further extended. The time limitation ensures that the effect of the executive order does not extend beyond the time period necessary to address the COVID-19 crisis.
2. The proposed immunity is limited in scope, as it does not apply to willful misconduct by a health care provider.
3. Health care providers who provide care and treatment consistent with standards of care, specifically developed for use in a crisis (discussed further, below), are provided temporary and limited immunity from civil liability and criminal prosecution.
4. Protection is provided to health care providers who in good faith endeavor to make decisions that will comply your Executive Order 20-72.
5. Immunity already afforded to “Good Samaritans” is extended to health care providers who would not otherwise have that immunity because they are compensated for their services or they otherwise do not meet requirements of Section 768.13, Florida Statutes, which are ordinarily appropriate but are not appropriate during a crisis.

The crisis standards of care referenced in the proposed executive order were developed by the Florida Bioethics Network (“FBN”). FBN, an affiliate of the University of Miami, was established in 1991 and works with health care providers to address complex legal and ethical issues. FBN developed the crisis standards of care in consultation with critical care physicians and ethics experts from around the United States. In developing the crisis standards of care, FBN also consulted analyses by a technical advisory committee convened by the Florida Department of Health to review actions in response to the 2009 H1N1 influenza emergency. The resulting crisis standards of care provide appropriate and necessary guidance to health care providers called upon to make the most challenging decisions required to respond to the COVID-19 crisis.

We greatly appreciate the efforts you, the Agency for Health Care Administration, the Department of Health and other state and local government agencies have undertaken to protect Florida’s citizens from the horrible effects of COVID-19. We stand ready to work with you to take steps necessary to protect Florida’s health care providers and citizens from a liability crisis.

On behalf of our coalition, thank you for your consideration.

Respectfully Submitted,

Florida Hospital Association
Associated Industries of Florida
Community Health Systems
Florida Association of Nurse Anesthetists
Florida Bioethics Network
Florida Chamber of Commerce
Florida College of Emergency Physicians
Florida Emergency Nurses Association

Florida Justice Reform Institute
Florida Nurses Association
Florida Nurse Practitioners Network
Florida Senior Living Association
Florida Society for Healthcare Risk
Management and Patient Safety
Florida Society for Respiratory Care
Florida Society of Anesthesiologists

Proposed Executive Order

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms of cough, fever, and shortness of breath; and

WHEREAS, on March 1, 2020, I issued Executive Order number 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, I issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, due to the outbreak of COVID-19, the State Surgeon General and the Secretary for the Agency of Health Care Administration recognize that due to the current conditions caused by COVID-19 in this state, that medical decisions may be necessary by health care providers to initiate measures to conserve medical supplies, including personal protective equipment and to make decisions regarding the utilization of life-saving medical equipment including but not limited to ventilators for individuals that need mechanical assistance for adequate oxygenation be used in response to this emergency or for any other medical event of urgent or emergent nature; and

WHEREAS, due to the outbreak of COVID-19, it is necessary for health care providers and others responding to this emergency, to be able to make decisions regarding the utilization of life supporting and live saving medical equipment, the modification of said equipment to serve the greatest number of individuals and all other decisions regarding the provision of care to individuals with COVID-19 without fear of criminal or civil liability:

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. Because of the foregoing conditions it is necessary to grant immunity to health care providers under certain sections of the State’s criminal code and for immunity from civil liability for acts taken and medical decisions made when providing care and treating to individuals with a confirmed or presumptive diagnosis of COVID-19 or treating individuals with other conditions that may be affected by the provision of care to individuals with a confirmed or presumptive diagnosis of COVID-19.

Section 2. For purposes of this executive Order, the term “health care provider” is defined as hospital, ambulatory surgical center, or mobile surgical facility as defined and licensed under chapter 395; a birth center licensed under chapter 383; a facility licensed under Parts II, III or IV of chapter 400; a facility licensed under chapter 429; any person licensed under chapter 458, chapter 459, chapter 462, part I of chapter 464, chapter 467, parts III, IV, V, of chapter 468, or chapter 486; a clinical lab licensed under chapter 483; a health maintenance organization certificated under part I of chapter 641; a blood bank; a plasma center; an industrial clinic; a renal dialysis facility; or a professional association partnership, corporation, joint

venture, or other association for professional activity by health care providers; or a Federally Qualified Health Center.

Section 3. IMMUNITY FROM CIVIL LIABILITY: No health care provider shall be liable for any civil damages caused by, arising out of, relating to, or resulting from:

- a. the care and treatment or the delay or withholding of care and treatment of individuals with a confirmed or presumptive diagnosis of COVID-19 in support of the State of Florida's response to the COVID-19 pandemic; or
- b. the care and treatment or the delay or withholding of care or treatment of any individual based on the good faith determination that the care and treatment or delay or withholding of care or treatment is consistent with the protocols set forth in Appendix A to this Executive Order; or
- c. the care and treatment or delay or withholding of care or treatment of any individual based upon the good faith determination of the health care provider that such delay or withholding of care and treatment was in compliance with Executive Order 20-72 issued March 20, 2020.

Section 768.13 is modified to the extent necessary to provide immunity to health care providers as set forth in this Section 3.

Section 4. CRIMINAL PROSECUTION: No health care provider shall be prosecuted or held criminally liable for the care and treatment or the delay or withholding of care or treatment of any individual based on the good faith determination by the health care provider that the care and treatment or delay or withholding of care or treatment is consistent with the protocols set forth in Appendix A to this Executive Order.

Section 5. The civil and criminal immunity conferred by this Executive Order does not extend to acts of willful misconduct by the health care provider.

Section 6. The civil and criminal immunity conferred by this Executive Order is in addition to any other immunity or limitations of liability provided by law.

Section 7. This Executive Order shall remain in effect until the expiration of Executive Order 20-52, including all extensions thereof, and the immunity granted herein shall apply to all claims arising out of care and treatment described in Sections 3 or 4 during the effective period of this Executive Order.