

Indiana State Department of Health Issues Guidance on Liability for Health Care Providers and Facilities Responding to an Emergency

Amundsen Davis Health Care Alert
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On April 3, 2020, the Indiana State Department of Health issued Guidance for facilities and individuals providing health care services in response to a declared disaster emergency, such as the current COVID-19 emergency declared by Governor Holcomb. The Guidance is a reminder of existing Indiana law under Ind. Code 34-30-13.5, which sets forth the immunity and specific conditions for the health services. In addition, the Guidance notes that the federal CARES Act also provided immunity for volunteer health care providers providing care during the emergency within the scope of their practice.

The Guidance points out that the health care provider is not required to have any type of employment status. They must have a license to provide health care services under Indiana law or the law of another state, and the service must be within the scope of their practice. The immunity also extends to facilities. Although the statute does not define the breadth of "facilities", the Guidance states that the immunity applies to any facility that provides health care services by a professional licensed under Indiana law or the law of another state. This can even extend to other "locations" set up in response to the COVID-19 emergency in a non-facility setting.

The immunity under the Indiana Code does not include civil liability relating to the provision of the health care services resulting from the provider's gross negligence or willful misconduct. It should also be noted that it does not include immunity from criminal or administrative/regulatory liability. As a result, the Guidance does not provide relief for facilities with respect to licensure or certification survey standards or other enforcement actions.

A major question under the Guidance is the breadth of the immunity coverage for this emergency. It is not clear whether the immunity is limited to the diagnosis, treatment and care of individuals with the COVID-19 virus, or whether it extends more broadly to a limited or unlimited extent of services provided during this emergency period. The Indiana statute requires that the services be

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“in response to an event that is declared a disaster emergency”, and the Guidance only states that “‘Health care services’ is defined broadly for the purpose of this immunity...” Also, while it provides immunity from liability, it does not preclude the possibility that lawsuits may still be filed.

The availability and breadth of this Indiana law and the Guidance issued by the Indiana State Department of Health will undoubtedly be litigated in the future. However, it is welcome guidance for health care providers, especially facilities licensed and surveyed by the Indiana State Department of Health with some measure of protection. We will be monitoring other pronouncements, bulletins and orders from the state that may affect this Guidance and other licensure, certification and practice standards and liabilities.

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