

Health Care Providers Get Limited Immunity Under State Coronavirus Law

Article

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Health care providers in Wisconsin now have immunity from civil liability, subject to certain exceptions, for death, injury or other damages caused by their services during the coronavirus emergency. The immunity provision is part of the wide-ranging coronavirus relief law which received final approval in the Legislature on April 15 and was signed into law by Governor Tony Evers hours later.

Other provisions relevant to long-term care providers address nurse aide training and expanded opportunities for credentials for providers. These are further discussed below.

The immunity provision covers health care “professionals” and “providers” – nursing homes, hospitals, assisted living facilities (Community Based Residential Facilities, Residential Care Apartment Complexes and Adult Family Homes), physicians, physician assistants, nurses, hospice, and physical, occupational and speech therapists. It also covers their employees, agents and contractors.

Immunity is only for services given during the state of emergency declared by Governor Evers on March 12, 2020, and for 60 days after the end of the state of emergency.

The immunity applies to conduct that is either done in good faith or is substantially consistent with guidance from federal, state or local government regarding the emergency. The legislation does not define “good faith.”

The measure does not provide immunity for “reckless or wanton” conduct or intentional misconduct. It does not define what conduct is “reckless” or “wanton.” A thorough review of the case law is beyond the scope of this article but, broadly speaking, Wisconsin courts have interpreted “reckless” and “wanton” in various contexts as constituting more than mere negligence and involving intent, unreasonable dangerousness, indifference to consequences, and similar standards.

The immunity provision is in a newly created statute, sec. 895.4801.

PROFESSIONALS

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Aside from immunity, the legislation also matches the state's requirement for nurse aide training to the lower federal requirement. It amends Wis. Stat. § 146.40(3) to prohibit the Department of Health Services from exceeding the 75 hours, including 16 hours of supervised practical training, required by the federal regulation, 42 C.F.R. 483.152(a). Wisconsin had required 120 hours of nurse aide training.

Providers are given expanded opportunities for credentialing:

- Certain provider credentials issued by boards in the Department of Safety and Professional Services (DPS) do not have to be renewed during the coronavirus emergency or for 60 days after it ends. During the next renewal period credentialing boards may exempt or reduce continuing education or other renewal requirements. This provision is in a newly created statute, Wis. Stat. § 440.08(5).
- Former providers may obtain temporary credentials from DPS and provide services for which they had been previously licensed or certified. The person must have been credentialed in the previous five years and not had his or her credential revoked, limited, suspended or denied renewal. This applies to physicians, physician assistants, nurses, dentists, pharmacists, psychologists, social workers, counselors, therapists and certain others.
- Providers in other states who have valid, unexpired credentials may obtain temporary credentials from DPS to provide health care services for which they are licensed or certified.

The temporary Wisconsin credentials for former and out-of-state providers expire 90 days after the end of the coronavirus emergency. These providers must maintain appropriate malpractice insurance. Certain other conditions apply to these credentialing provisions.

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