



LeadingAge PA



Pennsylvania Chapter



May 20, 2020

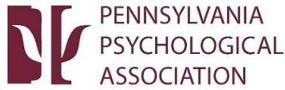
Dear Members of the Pennsylvania Congressional Delegation:

The COVID-19 public health emergency is putting incalculable stress on individuals and families, the economy and the health care system. Addressing this global pandemic requires unprecedented action by everyone. That is why despite many challenges residents across the Commonwealth have stayed in their homes, businesses have temporarily closed, and health care providers have stepped up to the frontlines to safeguard and treat their neighbors and Pennsylvania families. We appreciate all the continuing efforts by members of the Congressional delegation to help meet this challenge. We are requesting your help to address yet another aspect of this crisis—the need for good faith civil liability protections for health care professionals, providers, and facilities effective the first day of this declared public health emergency.

Prevailing in the Commonwealth’s fight against COVID-19 requires the undivided focus and full deployment of health care facilities and professionals serving on the front lines of the pandemic across our state. Health care providers, in partnership with state and local government, have taken extraordinary steps ranging from re-purposing units and building temporary facilities to assigning practitioners and caregivers to new roles and welcoming the return of retired practitioners to the frontlines. All of these efforts have one objective – to save lives. Now it appears across the nation that the trial bar is planning to unleash a torrent of litigation to second guess the actions of these practitioners and facilities on the front lines.

A number of states, either through legislation or Executive Orders, have taken action to provide some form of liability protection. Governor Wolf partially addressed this issue through an Executive Order, but it only provides liability protection for practitioners and not to the facilities or agencies where they provide services. These measures are designed to recognize that those on the front lines face the legal exposure that necessarily attends actions and decisions undertaken in responding to an unprecedented public health emergency. However, a patchwork of protections that vary state by state is no substitute for a uniform federal standard tied explicitly to the duration of COVID-19 crisis.

In addition, as you know this crisis has had an immediate and dramatic negative impact on all health care providers that have both near term and long term implications. Virtually all non-COVID-19 services in most facilities and ambulatory settings have been precipitously reduced either as result of explicit state restrictions or individuals determining not to seek care out of fear and caution. At the same time provider costs are skyrocketing for PPE and other critical supplies.



[The Urban Health Care Coalition of Pennsylvania](#)

Staffing is a critical issue with personnel shortages for some providers in the thick of the fight and ironically layoffs and furloughs for other providers largely idled during this pandemic. These and other factors have resulted in an unprecedented confluence of forces that is undermining the financial viability of our state's health care delivery system. This challenge is true for both those hospitals and providers treating high numbers of COVID-19 patients and those that are not. Inadequate financial resources and cash flow threatens ability of many individual practitioners and provider organizations to remain staffed and open.

Against this backdrop, there are two other important points about liability protection to underscore:

- **Liability Protections Should Apply To All Services During The Public Health Emergency:** While the rationale for emergency response and services to COVID-19 patients is easily understood, liability protection should extend to circumstances where care was deferred as a result of state orders to close services. The dramatic drop in utilization of services and the deferral of procedures likely will adversely impact the future health outcomes for certain patients. Health care providers should not be subject to lawsuits arising out of delayed care due to compliance with extraordinary state mandates.
- **Health Care Resources Are Scarce:** The unprecedented financial challenges facing health care providers is threatening the financial viability of some providers and for many other providers it will take years to address the financial hole created by this crisis. In short, diverting scarce health care resources to defend against liability claims will only compound the difficulties faced by providers and may contribute to undermining access to care for Pennsylvanians.

We recognize that this request for liability protection must be balanced against the rights of individuals. In this context, willful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual should not be protected. Further, this liability protection should be limited to the period covered under the formal federal public health emergency declaration.

Again, we appreciate the actions you have taken to date. We urge you to work to enact good faith liability protections for the hospitals, physicians, nurses, agencies, small and private practices, EMS and other health care providers such as drug and alcohol, mental health, intellectual disability, cognitive rehabilitation providers and many others who have acted selflessly to serve patients and communities during this pandemic. Every night at 7 PM the nation applauds health care heroes in hospitals and other facilities, but in the absence of your action to enact good faith liability protections, long after the applause dies down these heroes will be fighting a mountain of litigation.

Sincerely,

Healthcare Council of Western
Pennsylvania

LeadingAge PA

Pennsylvania Association for
Behavioral Healthcare

Pennsylvania Association of
Certified Nurse Midwives

Pennsylvania Association of
Community Health Centers

Pennsylvania Association of
Nurse Anesthetists

Pennsylvania Athletic Trainers
Society

Pennsylvania Chapter,
American Academy of Pediatrics

Pennsylvania Chiropractic
Association

Pennsylvania Coalition for Oral
Health

Pennsylvania College of
Emergency Physicians

Pennsylvania Dental Association

Pennsylvania Health Care
Association

Pennsylvania Homecare
Association

Pennsylvania Medical Society

Pennsylvania Optometric
Association

Pennsylvania Pharmacists
Association

Pennsylvania Psychiatric Society

Pennsylvania Psychological
Association

Pennsylvania Section of the
American College of Obstetricians
and Gynecologists

Pennsylvania Society of Physician
Assistants

Rehabilitation and Community
Providers Association

The Hospital and Healthsystem of
Pennsylvania

Urban Health Care Coalition