Liability Protections and Premium Relief for Physicians

OVERVIEW

As state governments are developing strategies to prioritize, guide and increase medical resources during the COVID-19 pandemic, we must make sure that fear of liability does not prevent physicians from acting decisively to deliver the medical response needed. Physicians must have assurance that they will not later be judged or sued for abiding by COVID-19 directives or making care decisions based on their best judgment and determination during the pandemic. Physicians also want assurance of relief from burdensome administrative and reporting requirements and medical liability premiums that could inhibit their COVID-19 response.

Under a catastrophic health care emergency declaration – which all states have issued – health care providers working and volunteering on the frontlines caring for COVID-19 patients are immune from civil liability if they act in good faith. While a good first step, this immunity should be broadened beyond front-line and volunteer physicians to include physicians:

- whose treatment decisions may be based on government directives,
- who will practice in temporary field hospitals and other auxiliary units,
- who have shifted their practices to telemedicine,
- who are asked to provide care outside of their specialty,
- who utilize equipment/supplies outside of normal use or whose use of equipment/supplies is restricted, and
- who comply with COVID-19 directives to suspend or restrict elective or nonemergency services.

CALLS TO ACTION

(1) broaden liability immunity protections for physicians including for reduced record-keeping and future lawsuits
(2) provide medical liability premium relief
ADVOCATE!

Urge your governor to use his/her executive order authority or your state legislature to pass legislation to:

- broaden liability immunity protections for physicians (as noted above)
- remove the future threat of lawsuits on physicians for helping the state manage the COVID-19 surge by delaying elective and non-emergency treatment
- relieve physicians and health care workers of burdensome record-keeping and administrative requirements to the extent necessary to perform tasks to respond to the COVID-19 pandemic
- See suggested liability immunity language below.

Urge your state insurance commissioner to work with medical professional liability insurers to:

- issue premium credits, reductions, refunds and/or suspensions
- issue a moratorium on cancellations and non-renewals of any policy in effect for a policyholder for at least a 60-day period

Executive Orders are temporary measures. Liability protections should be considered for broad-scale and long-term implementation beyond this pandemic.

Suggested liability immunity language:

‘Notwithstanding any law to the contrary, except as provided in subsection (b), health care professionals and health care facilities shall be immune from suit and any liability, civil or criminal, for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency, provided that:

the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule or in accordance with otherwise applicable law;

the health care facility or health care professional is arranging for or providing care and the treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak or COVID-19 emergency rules; and

the health care facility or health care professional is arranging for or providing health care services in good faith, whether or not within the scope of the licensee's practice, in the course of providing health care services in support of the State's COVID-19 response, whether or not such immunity is otherwise available under current law.

(b) The immunity provided in this subsection shall not apply if the harm or damages were caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm by a health care facility or health care professional providing health care services, provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.’ …… and shall not apply to consumer protection actions brought by the Attorney General, or to false claims actions brought by or on behalf of the Commonwealth

‘Health care facilities, health care service plans, health care professionals and physician group practices shall be immune from any liability or claim for any injury, death or loss alleged to have resulted from any acts or omission in providing, arranging, delaying or withholding care during and in the immediate aftermath of the current COVID-19 state of emergency, absent a compelling showing of wanton misconduct. The applicable standard of care applied to determine the presence of wanton misconduct incorporates all the circumstances of the state of emergency in existence at the time the care in question was provided, arranged for, delayed or withheld.’