

Indiana General Assembly Expands COVID-19 Immunity Protections

Article

Amundsen Davis Health Care Alert

April 28, 2021

The Indiana General Assembly was busy this session reinforcing and expanding immunity protections for health care providers for actions (and inactions) arising out of COVID-19 and the public health emergency orders imposed by state and local authorities. Early during this pandemic, the Indiana State Department of Health issued a pronouncement reminding providers of immunity protections that could apply, which was discussed in an alert that we issued in response. During the recent legislative session, the General Assembly enacted Senate Enrolled Act No. 1 (signed by the Governor on February 18) and House Enrolled Act No. 1002.

HEA 1002 was passed by the Indiana Senate by a vote of 41-9 on April 20, just before the General Assembly adjourned, and is now awaiting signature by the Governor. The Bill expands upon the immunities provided under existing law and within SEA 1, all of which will add to the breadth of questions that will be litigated in the coming months regarding the facts and circumstances that are intended to be covered by the immunity protections and what constitutes “arising under” COVID-19 treatment activity and the public health emergency orders.

Notably, among other provisions, HEA 1002 goes beyond immunity in civil malpractice lawsuits and extends that immunity to professional disciplinary matters. It states that a health care provider will not be subject to professional discipline for (1) acts or omissions of a health care provider committed with respect to the provision, withholding, delay, or withdrawal of health care services, or (2) an injury, a death, or a loss to a person or property alleged to have occurred because the health care provider was unable to treat, diagnose, or test the person for any illness, disease, or condition, including an inability to perform any elective procedure in compliance with an executive order or local health order issued in response to a declared state disaster emergency to respond to COVID-19. These immunities only apply to a period of a declared state disaster emergency to respond to COVID-19 after February 29, 2020 and before April 1, 2022.

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This recent legislative activity provides important protections for health care providers facing potential malpractice claims and disciplinary actions. The breadth and extent of the protections will be the subject of commentary and litigation, as well as newspaper articles, such as that published on the front page of the Indianapolis Star on Friday April 23. That article focused on concerns raised relating to residents in nursing homes, and whether HEA 1002 would provide nursing homes (and other health care providers) with “wide ranging liability protections that go beyond” the existing protections described in the ISDH Guidance and reinforced by SEA 1. Even prior to the enactment of HEA 1002, those existing protections were being discussed and beginning to be litigated.

We are carefully monitoring these developments, monitoring the commentary and analyses in professional trade associations, and advising health care clients navigating this shifting landscape. We will provide further updates as developments occur, and invite any questions that you may have.

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