

Coronavirus Response and Medical Liability

Main message points

- As the coronavirus outbreak continues in the United States, our frontline healthcare professionals are straining under an increasingly difficult burden. We are hearing from our physician community about the ever-growing threats they face—from the constant concern about the risks to their own health to the regulatory and judicial hazards that lie in wait in the weeks and months ahead.
- It is important for federal, state, and local agencies to work together and with the U.S. Congress to alleviate these threats to the greatest extent possible in order to allow our healthcare professionals to focus their time and attention on meeting patients' needs.
- The threat of liability lawsuits could dramatically increase under the circumstances that are happening right now as this situation continues to unfold. Specifically,
 - Physicians are being asked to provide treatments or care outside their general practice areas and for which they may not have the most up-to-date knowledge;
 - Healthcare professionals, and the facilities in which they practice, have inadequate safety equipment that could result in the transmission of the virus from patient to provider and then to additional patients, or directly from one patient to another;
 - Facilities face shortages of equipment, such as ventilators, and may be forced to ration care;
 - Physicians may face liability related to “elective” surgeries and procedures being delayed to provide additional capacity to treat coronavirus patients;
 - Inadequate testing that could lead to delayed or flawed diagnosis; and
 - Patients with issues other than coronavirus having to wait substantial periods of time and receive delayed treatment.

Medical volunteers

- The U.S. faced a significant physician shortage even before the coronavirus threatened to overwhelm the healthcare system. Current needs combined with health professionals having to isolate themselves because they have contracted the virus only exacerbates that shortage. Volunteers will likely fill the gap, many of crossing state lines to offer their expertise.
- State Good Samaritan laws do not always apply under circumstances like those we currently face. A federal response to extend Good Samaritan protections during national emergencies or disasters is urgently needed. Legislation to this effect has already been introduced in Congress (S. 1350/H.R. 6283); please encourage your legislators to endorse it as a component of the federal government's ongoing response.

Emergency Medical Treatment and Labor Act (EMTALA)

The Emergency Medical Treatment and Labor Act (EMTALA) has served patients well for many years; however, it could hinder efforts to provide the most efficient and effective care possible under current circumstances. For example:

- EMTALA waivers should be implemented to provide additional flexibility to healthcare professionals on the front lines in emergency departments in order to minimize the liability risk.
- Stabilization requirements should acknowledge the need to assess and treat large numbers of patients at a given time and allow flexibility for emergency departments to make the critical decisions necessary to meet the needs of the largest number of patients and/or those most in need of immediate care.

Healthcare professionals and facilities will make every effort to provide the best care possible to the most patients. Under these circumstances, it only makes sense to protect clinicians by limiting the threat of liability so that they can make critical decisions based on not what choice will be least likely to result in a lawsuit, but on which choice does the broadest possible good for the communities in which they serve.

**For additional information,
contact the MPL Association Government Relations Department
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