

Will Immunity Orders Enacted to Protect Nursing Homes Actually Limit Liability? *Healthcare Business Today*

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As COVID-19 related deaths amongst nursing homes in the United States tops more than 28,000, and continues to rise, it is necessary for nursing homes and other long-term care facilities to be prepared for COVID-19 related lawsuits. These facilities remain under constant pressure to implement the rapidly evolving, and increasingly detailed, protocols currently being issued by the CDC and CMS. The high potential for COVID-19 related lawsuits has led numerous states to enact legislation and/or issue executive orders affording immunity for healthcare facilities and healthcare professionals providing care during the COVID-19 pandemic. Such immunity orders recognize and acknowledge the difficult tasks healthcare professionals face in navigating the COVID-19 pandemic, including without limitation, staff shortages, inadequate medical supplies, and a lack of personal protective equipment (PPE).

Currently, twenty-three (23) states have enacted laws or issued executive orders providing protections from lawsuits arising from the pandemic. Generally, such orders limit civil liability for injury and death allegedly sustained directly resulting from a negligent act or omission by healthcare professionals. Under these new laws, the healthcare professionals and facilities must still act in good faith; no one is shielded from liability for gross negligence, or intentional criminal conduct. There is no bar on claims for willful, reckless, criminal misconduct or gross negligence. Most orders specifically mention "good faith" as a requirement for the immunity shield to apply.