

New PA Bill Offers COVID-19 Civil Immunity to Healthcare Providers

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On November 20, 2020, Pennsylvania legislators passed H.B. 1737, which affords healthcare providers and other businesses immunity from civil suits related to the COVID-19 pandemic. This legislation follows Pennsylvania Governor Tom Wolf's May 7, 2020 executive order which granted immunity to certain physicians, nurses and other providers relating to the care of patients with COVID-19, but did not include nursing homes and other healthcare facilities.

If H.B. 1737 is signed into law by Governor Wolf, the legislation will specifically afford healthcare providers and entities, including hospitals; nursing homes; temporary healthcare sites established for the pandemic; higher education institutions that operate healthcare facilities; EMS providers; clinical laboratories; and businesses that manufacture or distribute personal protective equipment (PPE), immunity from civil liability for damages or personal injury arising out of "treatment or testing for COVID-19 to patients who have been exposed to or whom a covered provider reasonably believes may have been exposed to COVID-19." In addition to providing protection for healthcare providers, the bill also provides schools, child care facilities and other business or government services immunity from negligence suits alleging actual or alleged exposure to COVID-19.

The bill prohibits civil liability so long as the provider or business made good faith efforts to comply with public health guidelines, including state and federal orders related to COVID-19. Covered entities are also protected from liability for claims arising out of (1) a shortage in PPE, supplies or personnel resulting from the pandemic and (2) the provision of care to patients in excess of their normal capacity as a result of the need to test for or treat COVID-19. Furthermore, the bill protects hospitals, nursing homes and other businesses from vicarious liability for the conduct of individual employees covered by the act. However, immunity does not apply if the injured party can establish with clear and convincing evidence that a covered individual or entity acted grossly negligent, recklessly or intentionally.

The major impact of this legislation is immunity for healthcare providers not covered by Wolf's May 7, 2020 Order. In addition to expanding liability protections to include hospitals and nursing homes, the bill also provides immunity even if potential plaintiffs pursue claims against them on a theory of vicarious liability. The bill was presented to Governor Wolf for signature on November 20. The Governor has the authority to veto the bill, and has not yet responded to media requests regarding whether he intends to do so.

White and Williams will continue to monitor activity related to H.B. 1737 to provide insight as to how this legislation may affect businesses and providers in the healthcare industry in the weeks to come.

If you have questions or would like additional information, please contact Dan Ferhat (ferhatd@whiteandwilliams.com; 215.864.6297), Erin Hohol (hohole@whiteandwilliams.com; 215.864.6310), or another member of the Healthcare Group.

Update: On November 30, 2020, Pennsylvania Governor Tom Wolf vetoed HB 1737 which would have afforded healthcare providers across the Commonwealth immunity from civil suits related to the COVID-19 pandemic. Read more about this development [here](#).

As we continue to monitor COVID-19, White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.

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