FEDERAL LIABILITY SHIELDS FOR HOSPITALS AND NURSING HOMES

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As the infamous coronavirus mercilessly infects millions throughout the country, nursing homes and long-term care facilities have emerged as hotspots for coronavirus infections and fatalities. Accounting for nearly one-third of all U.S. coronavirus deaths, these facilities face unrivaled challenges when protecting residents from coronavirus. Not only are they home to particularly vulnerable populations, but they are also often designed as open, shared living quarters, making them unconducive to patient isolation and infection prevention.

As a result of these major death tolls, health provider organizations are pushing for federal-level legal shields– or immunity laws— to relieve long-term care and nursing home facilities of any legal pushback they may receive regarding medical treatment throughout the pandemic.

Despite a lack of consensus at the federal level, at least 24 states have taken action to protect their healthcare facilities from coronavirus-related lawsuits. States such as New York, Connecticut, Illinois, Arizona, Massachusetts, and Michigan have set executive orders to protect nursing home and long-term care facilities from civil litigation.

California established immunity laws that were enacted when a state of emergency was declared; however, these protections don't currently extend to nursing homes. Because the scope of these laws varies greatly by state, federal protection would resolve these differences and complications that will come into play if patients or healthcare workers crossed state lines.

Liability shields are not meant to absolve healthcare facilities of negligence or malpractice. They are meant to recognize that healthcare facilities on the front lines of this pandemic have been dealing with unprecedented challenges and demands, and have been responding to conditions, circumstances, and regulations that are often beyond their control.

While these facilities are certainly required to ensure proper care is given to all of their patients, they vocalize that they have been adapting to the ever-evolving guidance and standards from government officials throughout the pandemic, which could have resulted in many unintentional, cascading implications.

In a letter to congress from the Health Coalition of Liability and Access (HCLA)—an advocacy coalition comprised of healthcare associations— chair members outline some situations that do not stem from negligence, but could be potential areas of liability risk:

- Inadequate testing
- Delayed "elective" surgeries or treatments for patients with issues other than coronavirus
- Shortages in equipment such as ventilators
- Inadequate safety equipment that could result in the transmission of the virus
- Care given by physicians that are providing treatment outside their general practice area, or by physicians that have been retired

On the other hand, consumer groups, victims' advocacy groups, and personal injury attorneys worry that the indemnification of long-term care facilities will make it harder to prove gross negligence. They worry that a blanket liability shield would not allow affected families and residents of facilities to seek proper redress—especially since regular inspections and visitations have been suspended and there is significantly less oversight.

As this unprecedented crisis continues to bring tragic losses, it is essential that healthcare workers continue to work in good faith under the conditions they are given. Documentation is key – ensure that employers are documenting the ways in which they are providing care that may deviate from standard practice, and why.