



Iowa Health Care Association
Iowa Center for Assisted Living
Iowa Center for Home Care

Liability Immunity - What Does It Mean to Me?

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SF 2338 Immunity Bill: What does it mean for my Facility or Agency?

Last week the Iowa Legislature passed and the Governor signed SF 2338 (The COVID-19 Response and Back to Business Limited Liability Act relating to COVID-19 liability). IHCA has provided more information about what the bill entails focusing specifically on the provisions most relevant to health care providers.

To whom does the bill apply?

The provisions apply to a number of various providers and entities but specifically includes Skilled Nursing Facilities; Residential Care Facilities, Assisted Living Facilities; and Home Health Agencies.

In what circumstances does the bill provide protection?

The bill specifically addresses health care provider liability. It provides that health care providers shall not be liable for civil damages while providing or arranging health care in support of the state's response to COVID-19 and gives specific situations in which it applies. The bill addresses liability for COVID-19 patients specifically and indicates it applies to a suit for "Injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of COVID-19".

The bill also applies to certain non-COVID-19 related cases. Specifically, it applies to "acts or omissions while providing health care to individuals unrelated to COVID-19 when those acts or omissions support the state's response to COVID-19". The bill thus provides protections to facilities relating to their care of residents who do not contract COVID-19. The bill then specifically delineates certain things that are covered. The most relevant provisions for our members are: "Acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to COVID-19 that renders the health care provider unable to provide the level or manner of care to any person that otherwise would have been required in the absence of COVID-19" and "Acts or omissions undertaken by a health care provider relating to use or nonuse of personal protective equipment".

Are there circumstances where the bill does not provide protection?

Yes, the bill does not protect providers from situations where the act or omission constituted recklessness or willful misconduct.

Does this mean I cannot be sued at all?

No, it is important to note that this bill does not mean that people will not bring any lawsuits. It will limit certain kinds of suits, discourage many other suits, and it will make those that get through much more difficult, but it is not a silver bullet. IHCA would encourage providers to continue to be diligent as they document their compliance and their attempts to obtain and use PPE.

Next, IHCA would note the effective date of the protections contained immunity bill start on January 1, 2020. However, the end date of the immunity protection is open ended. Specifically, the bill does not limit the time frame for which the legislation applies. This is important for multiple reasons. First it is important in that this may mean that providers are protected from cases that may arise during a future waive of COVID-19 because the bill does not cut off the time frame for coverage. This is also important because different causes of action have different statutes of limitation meaning they can be brought for varying periods of time. For example, a contract claim could be brought up to ten years while many other types of claims may have for example a three-year limitation. Thus, if some of the proposed amendments to this bill had been successful such as limiting protection to three years our providers protection would have been more limited.

Finally, it is important to understand that while this bill has been signed into law there will almost certainly be legal challenges to its validity as well as litigation relating to various interpretations or terminology in the bill. For example, some language which may be interpreted in various ways may limit the law's protections, thus increasing the risk of litigation (e.g. interpretation of the phrase "in support of the state's COVID-19 response" or "recklessness").

This bill is a significant step for our members and provides much needed protection. However as discussed above it does not serve as a shield for all liability or litigation. IHCA guidance to members would be to continue to document compliance with appropriate regulatory guidance and best practices as you navigate the uncertain circumstances of COVID-19.