

COVID-19 Federal and State Healthcare Immunity Orders / Legislation					
Jurisdiction	Order Link	Effective Date	Summary	Facilities Identified	Questions re Senior Living
Federal – Declaration / PREP Act	HHS March 17, 2020 Declaration Amended April 10, 2020 April 14, 2020 OGC Advisory Opinion on the PREP Act May 19, 2020 OGC Advisory Opinion on the PREP Act	February 4, 2020	<p>March 17, 2020, HHS issued a Declaration pursuant to Section 319F-3 of the Public Health Service Act to provide liability immunity for Recommended Activities related to covered countermeasures.</p> <p>These liability protections provide that, “[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a Declaration has been issued with respect to such countermeasure.” Immunity does not apply for except for claims involving “willful misconduct.”</p> <p>The PREP Act states that a “Covered Countermeasure” must be a “qualified pandemic or epidemic product,” or a “security countermeasure,” as described [in the PREP Act]; or a drug, biological product or device authorized for emergency use in accordance with Sections 564, 564A, or 564B of the FD&C Act. Covered Countermeasure must be approved or cleared under the FD&C Act, licensed under the PHS Act, or authorized for emergency use under Sections 564, 564A, or 564B of the FD&C Act.</p> <p>April 13, 2020: HHS published an amendment to the PREP Act Declaration to extend liability immunity for activities related to medical countermeasures authorized under the CARE Act – adding respiratory protective devices approved by NIOSH as a “covered countermeasure.”</p>	<p>“Covered Person” are the United States, and those that manufacturer, distribute, administer, prescribe or use Covered Countermeasures. The Declaration includes all persons and entities defined as Covered Persons under the PREP Act (PHS Act 317F-3(i)(2)) as well as others set out in paragraphs (3), (4), (6), (8)(A) and (8)(B). Also includes program planners and qualified person, and their officials, agents, and employees.</p> <p>“qualified person” means a “licensed health professional or other authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the Covered Countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Sec.’s Declaration.”</p>	<p>Not clear that senior living falls within the “covered person” protection.</p> <p>Even if AL included as a “qualified person” to be a “Covered Person,” it’s only as to Covered Countermeasures which are very narrow and limited to Countermeasures are very narrow – limited to a drug or a device; may provide protection related to face masks, other PPEs, and medications, but scope is not much wider.</p>

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			May 19, 2020, OGC issued an advisory opinion that licensed pharmacists are included within the scope of qualified persons such that pharmacists can administer COVID-19 tests.		
Federal – CARES Act	The Coronavirus Aid, Relief, and Economic Security (CARES) Act	March 27, 2020	Provides temporary immunity, under both federal and state laws, for any volunteer health care professional in the provision of health care services (any harm caused by an act or omission) during the public health emergency with respect to COVID-19.	Volunteer health care professionals	Only applies to volunteers
Alabama EO	8th Supplemental Proclamation	May 8, 2020	<p>Gov. Ivey proclaimed liability protections for businesses and health care providers.</p> <p>Liability Protections: “A business, health care provider, or other covered entity shall not be liable for the death or injury to persons or for damage to property in any way arising from any act or omission related to, or in connection with, COVID-19 transmission or a covered COVID-19 response activity, unless a claimant shows by clear and convincing evidence that the claimant’s alleged death, injury, or damage was caused by the business, health care provider, or other covered entity’s wanton, reckless, willful, or intentional misconduct.”</p> <p>Limitations on Damages: “In those instances where liability is established . . . and the acts or omissions do not result in serious physical injury, a business, health care provider, or other covered entity’s liability shall be limited to actual economic compensatory damages, and in no event shall the business, health care provider, or other covered entity be liable for non-economic or punitive damages. A party asserting a wrongful death claim . . . is only entitled to an award of punitive damages.”</p> <p>The Proclamation also addresses any cause of action relating to COVID-19 transmission or</p>	<p>“Health care services or treatment” are “those services and treatment defined by Alabama law and Alabama Code §§ 6-5-540 <i>et seq.</i>”</p> <ul style="list-style-type: none"> • Ala. Code §§ 6-5-540 is The Alabama Medical Liability Act of 1987. (“Med Mal Act”) • The Med Mal Act does not have a defined term for “health care services and treatment” but it does define “health care provider” as including “or other health care provider are those terms are defined in Section 6-5-481. Section 22-21-20 (appears it is 22-21-20, not 21, that has definitions) defines hospitals to include entities including “long-term care facilities” including “skilled nursing facilities” and “assisted living facilities.” <p>“Health care provider” are “any health care facility, professional, or person as defined in the Alabama Code and includes, but is not limited to:</p> <p>a. Any health care provider as</p>	Appears to cover AL; scope appears to cover COVID-19 or connected/impacted by COVID-19.

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			<p>covered COVID-19 response activity “where the cause of action accrued before the issuance of this proclamation and for which a court holds that the [two above provisions] do not apply, by proclaiming an a standard of care for those matters, as well as an adjustment of remedies. Specifically:</p> <ul style="list-style-type: none"> a. Standard of Care. “[A] business, health care provider, or other covered entity shall not be liable for negligence, premises liability, or for any non-wanton, non-willful, or non-intentional civil cause of action with respect to any individual or entity relating to or in connection with COVID-19 transmission or any covered COVID-19 response activity unless the claimant proves by clear and convincing evidence that the business, health care provider, or other covered entity did not reasonably attempt to comply with the then applicable public health guidance. b. Adjustment of remedies. “Notwithstanding any other provision of law, a business, health care provider, or other covered entity shall not be liable for damages from mental anguish or emotional distress or for punitive damages but could be liable for economic compensatory damages in a cause of action that does not involve serious physical injury. This subsection shall not prohibit the awarding of punitive damages for wrongful death claims, but no other damages shall be allowed for such claims.” <p>The Proclamation also preserves any health care provider protection in previous proclamations. “If the liability protections contained in this proclamation are adjudged not to cover a health care provider for any reason, then nothing in this proclamation shall be construed to limit, impair, or supersede my proclamation dated March 13,</p>	<p>that term is defined in Alabama Code § 6-5-542(1) or any of the providers defined in § 6-5-481(1)-(8);</p> <ul style="list-style-type: none"> b. Any health care facility licensed or approved in the State of Alabama, including, but not limited to, any facility licensed or approved by the Alabama Department of Public Health or mental health facility . . . including any health care facility or pharmacy operating and providing services pursuant to the provisions in my Emergency [EO] dated April 2, 2020 and any support personnel . . .; c. Any medical or health care professional, individual, or entity holding a license, registration, permit, certification, or approval . . . to practice a health care profession or occupation in Alabama, including under the [PREP] Act and any declaration of the [DHHS] in accordance with that Act, under any of my COVID-19-related emergency proclamations, under any rule or regulation promulgated by a licensing board or agency pursuant to such emergency proclamations, or otherwise in response to the COVID-19 pandemic and including any support personnel of any such individual or entity.” 	
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			<p>2020, or any other State law presently governing legal standards or procedures . . . in any civil action against a health care provider. In addition, for cases where the health care services or treatment provided by the health care provider do not result from or are not affected by the COVID-19 pandemic or do not result from, or are not affected by, or are not in support of the State’s response to the COVID-19 pandemic, my previous emergency proclamations and existing Alabama law and standards shall govern the action as outlined in Alabama Code §§ 6-5-540 <i>et seq.</i>"</p> <p>“Covered COVID-19 response activity” is “any or all of the following activities by a business, health care provider or other covered entity:</p> <ul style="list-style-type: none"> a. Any testing, distribution of testing materials, monitoring, collecting, reporting, tracking, tracing, investigating, or disclosing exposures or other information in connection with COVID-19 during the ongoing state of emergency; b. Any performance or provision of health care services or treatment by a health care provider that resulted from, was negatively affected by, was negatively impacted by a lack of resources caused by, or was done in response to the COVID-19 pandemic or the State’s response thereto; c. Any design, manufacture, distribution, allowance, use, or non-use of precautionary equipment or supplies such as PPE in connection with COVID-19 during the ongoing state of emergency; d. Any design or manufacture of testing materials done under the direction of ADPH and in accordance with ADPH’s specifications." <p>Retroactive to March 13, 2020, until the State COVID-19 public health emergency is terminated.</p> 		
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Alabama EO	March 13, 2020 Proclamation	March 13, 2020	<p>Governor Ivey declared a state public health emergency invoking the “Alternative Standards of Care”</p> <p>“Health care facilities that have invoked their emergency operation plans in response to this public health emergency crisis may implement the ‘alternative standards of care’ plans which will serve as the “standard of care” as defined in section 6-5-542(2), Code of Alabama.</p> <p>The Proclamation also states that “all health care professionals and assisting personnel executing the alternative-standards-of-care plans in good faith are hereby declared to be ‘Emergency Management Workers’ of the State for purposes of Title 31.</p> <p>Title 31-9-16 provides immunity of state, etc. from liability for torts resulting from emergency management activities. Immunity is provided to “[a]ny emergency management worker, individual, partnership, association, or corporation.” Further “emergency management worker” is defined to include any full-time or part-time paid, volunteer, or auxiliary employee . . . <i>or any agency or organization performing emergency management services</i> at any place in this state <i>subject to the order or control of, or pursuant to, a request of</i>, the state government or any political subdivision thereof.” (Emphasis added)</p> <p>Immunity does not apply if willful misconduct, gross negligence, or bad faith.</p>	<p>Title 31 is the Emergency Worker Management Provisions with some immunity; but scope appears to reference health care professionals and assisting personnel.</p>	<p>Not clear if professional includes entities. Also, not clear who “health care professional” or “assisting personnel” means.</p>
Alabama Legislation			<p><u><i>Pre-existing legislation:</i></u></p> <p>Section 1 provides “Alternative standards of care” for health care facilities as follows:</p>	<p>Alabama Code 6-5-542 defines health care provider as “medical practitioner, dental practitioner, medical institution, physician, dentist,</p>	<p>Looks like AL is included, but they need to invoke a “emergency operation plan.”</p> <p>Does not provide immunity – rather, just resets the</p>

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			<p>“Health care facilities that have invoked their emergency operation plans in response to this public health crisis may implement the “alternative standards of care” plans provided therein” which will be declared to be state-approved “to be executed by health care professionals and allied professions and occupations providing services in response to this outbreak.”</p> <p>These will set the “standards of care” in section 6-5-542(2), Code of Alabama for the “degree of care” owed to patients by licensed, registered, or certified health care professionals for purpose of section 6-5-484. Also declares these health care professionals and assisting personnel as “Emergency Management Workers” of the State of Alabama.</p>	<p><i>hospital</i>, or other health care provider defined in Section 6-5-481. It also outlines the standard of care (level of such reasonable care, skill, and diligence as other similarly situated health care providers.</p> <p>Alabama Code Section 6-5-481 directs the reader to see Section 22-21-21 for the definition of “hospital” and in Alabama Code 22-21-20 “Hospital” is defined to include “long term care facilities such as, but not limited to, skilled nursing facilities, intermediate care facilities, <i>assisted living facilities, and specialty care assisted living facilities rising to the level of intermediate care.</i>”</p>	<p>standard of care that would apply in the situation.</p>
<p>Alaska</p>	<p>Senate Bill 241</p>	<p>April 9, 2020</p>	<p>Governor Dunleavy signed into law Senate Bill 241 which extends the Governor’s declaration of a public health disaster emergency in response to COVID-19. It provides immunity to “a public health agent or health care provider who takes action based on a standing order issued by a chief medical officer . . . for civil damages resulting from an act or omission in implementing the standing order.” No immunity for gross negligence, recklessness, or intentional misconduct.</p> <p>Also provides immunity to “a health care provider or manufacturer of personal protective equipment . . . resulting from an act or omission in issuing, providing, or manufacturing personal protective equipment in the event of injury or death to the user of the personal protective equipment if the personal protective equipment was issued, provided, or manufactured in good faith to respond to the COVID-19 public health disaster</p>	<p>“health care provider,” “public health agent,” and “essential public health services and functions” have the meanings given in AS 18.15.395.</p> <p>AS 18.15.395 (10) defines “public health services and functions” as services and functions to including the following:</p> <ul style="list-style-type: none"> (D) mobilize public and private sector collaboration and action to identify and solve health problems; (E) develop policies, plans, and programs that support individual and community health efforts; (F) enforce statutes and regulations of this state that protect health and safety; (G) link individuals to needed health services and facilitate the provision of health care when otherwise available; 	<p>Does not appear to include AL unless AL is considered to be providing “health care services;” scope is limited to taking action in response to a standing order issued by a chief medical officer.</p>

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			<p>emergency.” No immunity for gross negligence, recklessness, or intentional misconduct. But, the health care provider or manufacturer must notify the user of the PPE that the equipment may not meet established federal standards and requirements.</p>	<p>Etc.</p> <p>AS 18.15.395 (12) defines “health care provider” as “any person that provides health care services; includes a hospital, medical clinic or office, special care facility, medical laboratory, physician, pharmacist, dentist, physician assistant, nurse, paramedic, emergency medical or lab technician, community health worker, and ambulance and emergency medical worker.”</p> <p>AS 18.15.395 (18) defines “public health agent” as “an official or employee of the department who is authorized to carry out provisions of AS 18.15.355 – 18.15.395. (Prevention and Control of Conditions of Public Health Importance)</p>	
Arizona	Executive Order 2020-27	April 9, 2020	<p>Governor Ducey gave a “Good Samaritan” Order Protecting Frontline Healthcare Workers Responding to the COVID-19 Outbreak.” If acting in good faith, <i>in the course of providing medical services in support of the State’s public health emergency for COVID-19</i>, the following are presumed to have acted in good faith and is immune from civil liability:</p> <ul style="list-style-type: none"> *AZ healthcare professional licensed pursuant to A.R.S. Title 32, Chapters 13, 15, 17, 18, 25, and 35, *a volunteer health professional registered *AZ Emergency Medical Care Technician *AZ healthcare institution licensed to A.R.S. Title 36, Chapter 4, entity operating a modular field treatment facility, or other site designated by the Dir. of AZ Dep’t of Health Services for temporary use in support of the State’s COVID-19 response. 	<p>“Healthcare professional” means:</p> <p>A.R.S. Title 32: Chp 13: Medicine and Surgery (physicians) Chp 15: Nursing Chp 17: Osteopathic Examiners in Medicine and Surgery Chp. 18: Pharmacy Chp. 25: Physician Assistants Chp. 35 Respiratory Care Volunteers</p> <p>Healthcare Institution licensed to ARS Title 36, Chp 4 = hospitals, adult day care facility, adult foster care home, <i>assisted living center, assisted living facility, assisted living home</i></p>	<p>AL referenced</p> <p>As to scope, the question is what the phrase “in the course of providing medical services <i>in support of</i> the State’s public health emergency for COVID-19” means – can read it broadly to include operating during the time, but can also read narrowly to only include if the entity is actively engaged in supporting the State’s response/directives to combat COVID-19 and not ordinary services that would otherwise have been provided in the absence of the pandemic.</p>

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			<p>This section includes the entity’s agents, officers, employees, representatives, or volunteers.</p> <p>Does not provide immunity for gross negligence or reckless or willful misconduct including but not limited to, the healthcare professional, volunteer, or other individual rendering medical care services under the influence of alcohol or an intoxicating drug.</p> <p>The Order expires on June 30, 2020 unless extended.</p>	<p>Arizona Revised Statutes Title 36: Chapter 4 Sec 36-401:</p> <p>“Health care institution” means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services, or directed care services and includes home health agencies . . . and hospice services.”</p>	
Arkansas	<p>Executive Order 20-34</p> <p>Executive Order 20-18</p>	<p>June 15, 2020</p> <p>April 13, 2020</p>	<p>EO 20-34: Governor Hutchinson executed EO 20-34 as part of the State’s response to the COVID019 public health emergency and pursuant to the Declaration of the Secretary of the U.S. Dep’t of HHS under the PREP Act. This EO authorizes “Healthcare Providers” for the purpose of diagnosing, treating, mitigating, or curing COVID-19 or any complication therefrom, to use any drug, device, or product approved or cleared under the [FD&C Act], licensed under the Public Health Service Act, or authorized for emergency use under an Investigational Drug Application of the FD&C Act.”</p> <p>EO 20-34 also requests and authorizes Healthcare Providers to provide “Healthcare Services” “in response to the COVID-19 pandemic during the declared emergency.” These Healthcare Providers are declared to be “Emergency Responders” during the public health emergency.</p> <p>EO 20-34 also requests these Emergency Responses “to perform Healthcare Services directed at the prevention, treatment, mitigation, or cure of COVID-19” and lists examples of Emergency Management Functions which include “planning to or enacting crisis standards of care measures, such as modifying numbers of beds,</p>	<p>EO 20-34 applies to “Healthcare Providers” which the EO defines as health care providers who are “licensed, certified, or otherwise authorized by law to administer health care” or “any partnership, association, corporation, or other facility or institution that employs or contracts with such health care providers to provide healthcare services in their normal course of business or operation.”</p> <p>EO 20-34 defines “Healthcare Services” to include acts or treatment performed or furnished by a Healthcare Provider to a patient during the patient’s medical care, treatment, or hospitalization that are directed at the treatment, mitigation, or symptoms of COVID-19</p> <p>EO 20-18: Specific emergency responders are listed in the EO.</p>	<p>EO 20-34 appears to arguably include AL facilities that employ “licensed, certified, or otherwise authorized to administer health care” individuals to provide healthcare services or contract with such health care providers to provide healthcare services.</p> <p>EO 20-18: appears limited to identified “emergency responders.”</p>

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			<p>preserving [PPE], and triaging access to services or equipment.”</p> <p>EO 20-34 then provides immunity to those “Emergency Responders” and “Healthcare Providers” from “liability for any death, injury, or property damage alleged to have been sustained as a result of any act or omission by such Healthcare Provider in the course of providing COVID-19 related emergency management functions during this public health emergency if the act or omission occurs as the result of a good faith effort on the part of the Healthcare Provider and was the direct result of the Healthcare Provider’s providing a Healthcare Service to a patient for the treatment and mitigation of COVID-19 or the symptoms of COVID-19 during the COVID-19 public health emergency.” No immunity for willful, reckless, or intentional misconduct.</p> <p>Immunity is also given for using prescription drugs or devices to treat a known or suspected COVID-19 infection under certain conditions.</p> <p>EO 20-18: Governor Hutchinson ordered a “suspension of Ark. Code Ann § 12-75-103(7)(C), to the extent necessary to provide immunity from liability to the following emergency responders, whether employed by the State or Federal Government, a private entity, or non-profit entity, for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State’s response to the COVID-19 outbreak or the implementation of measures to control the causes of the COVID-19 epidemic: (a) physicians; (b) physician assistants; (c) specialist assistants; (d) nurse practitioners; (e) licensed registered nurses; and (f) and licensed practical nurses.”</p> <p>Immunity will not apply if the action or omission</p>		
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			results in an injury or death due to: (a) acting outside the scope of his or her practice unless he or she has been redeployed as a result of Section 3(d) of this order; or (b) acting in gross negligence, willful misconduct, or bad faith.		
California					
Colorado					
Connecticut	Executive Order No. 7U Executive Order No. 7V	<p>April 5, 2020</p> <p>April 7, 2020</p>	<p>EO No. 7U: Superseded by 7V (see below) [Governor Lamont ordered that any health care professional or health care facility shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual’s or health care facility’s acts or omissions undertaken in good faith while providing health care services in support of the State’s COVID-19 response, including but not limited to acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic. Immunity does not extend to acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act to Section 4-275, <i>et seq.</i>]</p> <p>EO No. 7V: In Provision 6 of Executive Order 7V, Governor Lamont superseded and replaced Section 1 of EO 7U to read: “Notwithstanding any provision of the [CT] General Statutes or any other state law . . . any health care professional or health care facility shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual’s or health care facility’s acts or omissions undertaken in good faith while providing health care services in support of the State’s COVID-19 response, including but not limited to acts or omissions undertaken because of a lack of resources, attributable to the COVID-19 pandemic, that renders the health care professional</p>	<p>EO No. 7U & 7V: “health care professional” means an individual who is licensed, registered, permitted, or certified in any state in the U.S. to provide health care services, retired, inactive license, or approved volunteer.</p> <p>EO No. 7U & 7V: “health care facility” means hospital, clinic, nursing home, field hospital, or “other facility designated by Comm. of the Dep’t of Public Health for temporary use for the purposes of providing essential services to support State’s COVID-19 response.”</p>	<p>Health care professional doesn’t include non-licensed staff. [Per Affiliate, only includes licensed RN, not even LPN]</p> <p>Facility does not include AL or other senior living.</p>

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			or health care facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic and which resulted in the damages at issue . . .” No immunity for crime, fraud, malice, gross negligence, willful misconduct, or acts or omissions that would otherwise constitute a false claim or prohibited act pursuant to CT or Federal statutes cited.		
Delaware					
District of Columbia (D.C.)	<p>D.C. Act 23-286 (Codified as §7-311)</p> <p>D.C. Act 23-299</p>	<p>June 8, 2020</p> <p>May 4, 2020</p>	<p>Mayor Bowser signed D.C. Act 23-286 which provides for some limited liability protections:</p> <p>Beg. On page 68, Sec. 707: “Healthcare provider liability:”</p> <p>“A healthcare provider, first responder, or volunteer who renders care or treatment to a potential, suspected, or diagnosed individual with COVID-19 shall be exempt from liability in a civil action for damages resulting from such care or treatment of COVID-19, or from any act or failure to act in providing or arranging medical treatment for COVID-19 . . .”</p> <p>Limitations on liability also apply to “a party involved in the healthcare provider, first responder, volunteer, . . . (‘provider’), including a party involved in the healthcare process at the request of a health-care facility or the District government and acting within the scope of the provider’s employment or organization’s purpose, contractual or voluntary service, or donation, even if outside the provider’s professional scope of practice, state of licensure, or with an expired license, who:</p> <p>(1) Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus . . .</p>	<p>D.C. Act 23-286: Healthcare provider is not defined.</p>	<p>D.C. Act 23-286: Appears limited in scope to treatment of COVID-19 individuals.</p>

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			<p>(2) Provides direct or ancillary health-care services or health care products, including direct patient care, testing, equipment or supplies, consultations, triage services, resource teams, nutrition services, or physical, mental, and behavioral therapies; or</p> <p>(3) Utilizes equipment or supplies outside of the product’s normal use for medical practice and the provision of health-care services to combat the COVID-19 virus;</p> <p>Limitations on liability shall not extend to: (1) Acts or omissions that constitute actual fraud, actual malice, recklessness, breach of contract, gross negligence, or willful misconduct; or (2) Acts or omissions unrelated to direct patient care; provided, that a contractor or subcontractor shall not be liable for damages for any act or omission alleged to have caused an individual to contract COVID-19.”</p> <p>Limitations on liability “extend to acts, omissions, and donations performed or made during a period of time for which the Mayor has declared a public health emergency . . . and to any time from acts, omissions, and donations made during the public health emergency.”</p> <p>Also an exemption from criminal prosecution for act or failing to act “in providing or arranging medical treatment for COVID-19 during a public health emergency, if such action is made in good faith.</p> <p>Remains in effect for no longer than 90 days.</p>		
Florida					
Georgia EO	Designating Auxiliary Emergency	April 14, 2020	Governor Kemp ordered “[t]hat all employees, staff, and contractors of healthcare institutions and medical facilities shall be considered auxiliary	Code Sec. 31-7-1 (4)(A): “Institution” means: hospital, nursing home, assisted living	As written, the Order appears to intend to protect the “healthcare institutions and medical facilities,” however, it specifically applies to “employees, staff, and

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	<p>Management Workers and Emergency Management Activities EO Executive Order 05/12/20</p>	<p>May 12, 2020</p>	<p>emergency management workers pursuant to Code Section 38-3-35.” Only applies to employees, staff, and contractors of healthcare institutions and medical facilities defined by Code Secs. 31-7-1(4)(A), 31-7-1(4)(C)-(G), and 31-7-1(5) and “where services are provided or performed during the Public Health State Emergency.</p> <p>Further orders that services provided or performed by healthcare institutions and medical facilities are “emergency management activities” pursuant to Code Sec. 38-3-35.</p> <p>Expires at the end of the Public Health State of Emergency.</p> <p>Official Code of Georgia Sec. 38-3-35 provides immunity for “personal injury or property damage by any person appointed or acting as a volunteer emergency management worker or member of any agency engaged in emergency management activity.” No immunity for “willful misconduct, gross negligence, or bad faith.”</p> <p>Code 38-3-35(j) also provides immunity to “any individual, partnership, association, or corporation” that is following any order, rule, or regulation from the Governor pursuant to this Code.</p>	<p>community or personal care home</p> <p>(4)(C): “Institution” means: ambulatory surgical treatment center</p> <p>(4)(D): “Institution” means: “any fixed or mobile specimen collection center or health testing facility where specimens are taken from the human body for delivery to and examination in a licensed clinical laboratory or where certain measurements such as height and weight determination . . . are made, excluding public health services operated by the state, its counties, or municipalities.”</p> <p>(4)(E): “Institution” means: birthing center</p> <p>(4)(F): “Institution” means: building or facility devoted to the treatment and rehab of persons for periods continuing for 24 hours or longer for persons with traumatic brain injury and defined in Code Section 37-3-1</p> <p>(4)(G): “Institution” means: freestanding imaging center for MRI, CI, PET, etc., but not X-rays, flurorscopy, or ultrasound services and in a location.</p> <p>(5) “Medical facility” means any licensed general hospital, destination cancer hospital, or specialty hospital, institutional infirmary, public health center, or diagnostic and treatment center.</p>	<p>contractors” and “services.” Therefore, it is unclear if the Order fully protects operating entities and owners. But, argument that since the services they provided are “emergency management activities” that the institution itself is deputized. Further, the Press Release from the Governor’s office says institutions are covered.</p> <p>Further, Code Sec. 38-3-51(j) provides that “any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable . . .”</p> <p>Includes services as an “emergency management activity.”</p>
<p>Georgia</p>	<p>Georgia</p>	<p>waiting on</p>	<p>Gov. Kemp is anticipated to sign into law SB 359</p>	<p>“Healthcare facility” is defined to</p>	<p>Appears to cover Assisted Living and Personal Care</p>

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<p>Legislation</p>	<p>COVID-19 Pandemic Business Safety Act</p>	<p>Governor to sign]</p>	<p>known as the “Georgia COVID-19 Pandemic Business Safety Act” which provides for certain immunities from liability claims regarding COVID-19 and provides for assumptions of risk presumptions in identified situations.</p> <p>Section 3 – 51-16-2 provides: “No healthcare facility, healthcare provider, entity, or individual, shall be held liable for damages in an action involving a COVID-19 liability claim against such healthcare facility, healthcare provider, entity, or individual, unless the claimant proves that the actions . . . showed: gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.</p> <p>“COVID-19 liability claim” is defined to mean “a cause of action for:</p> <p>(A) Transmission, infection, exposure, or potential exposure of COVID-19 to a claimant:</p> <p>(i) At any healthcare facility or on the premises of any entity, individual, or healthcare provider, resulting in injury to or death of a claimant; or</p> <p>(ii) Caused by actions of any healthcare provider or individual resulting in injury to or death of a claimant;</p> <p>(B) Acts or omissions by a healthcare facility or healthcare provider in arranging for or providing healthcare services or medical care to the claimant resulting in injury or death of the claimant for COVID-19 or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant; or</p> <p>(C) Manufacturing, labeling, donating, or distributing [PPE] or sanitizer that is directly related to providing such [PPE] or</p>	<p>have the same meaning as:</p> <ul style="list-style-type: none"> • Paragraph 17 of Georgia Code 31-6-2 and all related parties; • “Institution” as provided in subparagraphs (A) and (C) through (G) of paragraph (4) and paragraph (5) of Georgia Code Sec. 31-7-1 [See GA EO above for listing that includes Assisted Living and Personal Care Home in (4)(A)] • and all related parties; • “End stage renal disease” as provided in paragraph (6) of Code Section 31-44-1 and all related parties; • The recipient of a contract as authorized in paragraph (5) of Code Section 37-1-20 [mental health]; and, • Any clinical lab certified under CLIA. <p>The term “Healthcare facility” “shall not be construed to include premises.”</p> <p>“Related parties” – used in the “healthcare facility” definition is defined to include:</p> <ul style="list-style-type: none"> • “Persons, business corporations, general partnerships, [LLCs], [LLPs], joint ventures, nonprofit corporations, or an other for profit or not for profit organization that owns or controls, is owned or controlled by, or operates under common ownership or control, of a healthcare 	<p>Homes under the healthcare protections. “Healthcare provider” however, appears to be limited to licensed professionals or otherwise authorized to furnish healthcare services, which is not defined.</p>
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			<p>sanitizer to claimant by any entity during a public health state of emergency for COVID-19, which departs from the normal . . . that proximately results in injury to or death of a claimant.”</p> <p>In addition to the limited immunity above, the Act provides to sections involving a reasonable presumption of assumption of risk by a claimant:</p> <p>51-16-4 provides “in an action involving a COVID-19 liability claim for transmission, infection, exposure or potential exposure of COVID-19 to a claimant on the premises at any healthcare facility or on the premises of any healthcare provider, resulting in injury to or the death of a claimant there shall be a rebuttable presumption of assumption of risk by the claimant when a healthcare facility or a healthcare provider has posted at a point of entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any other text, a writing warning stating the following: [<i>see The Act for the warning</i>].”</p> <ul style="list-style-type: none"> • This rebuttable presumption does not apply in cases of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. <p>There is also 51-16-3 which provides “in an action involving a COVID-19 liability claim against an individual or entity for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant on the premises of such individual or entity, there shall be a rebuttable presumption of assumption of risk by the claimant when:</p> <ul style="list-style-type: none"> • “Any receipt or proof of purchase for entry . . . issued to a claimant by the individual or entity for entry or attendance, includes a statement in at least ten-point Arial font placed apart from any other text, stating the following warning: [<i>see The Act for the</i> 	<p>provider or healthcare facility, or has legal responsibility for the acts or omissions of such healthcare facility or healthcare provider.”</p> <p>“Entity” is defined as any association, institution, corporation, company, trust, [LLC], partnership, religious or educational organization, policy subdivision, . . . volunteer organization; including trustees, partners, limited partners, managers, officers, directors, employees, contractors, independent contractors, vendors, officials, and agents thereof, as well as any other organization <i>other than a healthcare facility.</i>” (Emphasis added)</p>	
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			<p>warning]” “or</p> <ul style="list-style-type: none"> An individual or entity of the premises has posted at a point of entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any other text, a written warning stating the following: [see <i>The Act for the warning</i>].” <p>This rebuttable presumption does not apply in cases of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. [<i>Note</i>, the term “entity” is defined in the act.]</p> <p>The Act states it applies to causes of action accruing until July 14, 2021. Further, it states the Act is effective upon approval by the Governor or becoming law without such approval, or on August 7, 2020, whichever occurs first.</p>		
Hawaii	Executive Order No. 20-25	April 16, 2020	<p>Governor Ige directed that “all health care facilities, health care professionals, and health care volunteers . . . to render assistance in support of the State’s response to the disaster . . .” “For health care facilities, ‘rendering assistance’ in support of the State’s response includes cancelling or postponing elective surgeries and procedures . . . under the circumstances presented by the COVID-19 emergency In addition, for health care facilities, ‘rendering assistance’ in support of the State’s response must include measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19.”</p> <p>Governor Ige also provides immunity to those health care facilities, health care professionals, and health care volunteers “that in good faith comply completely with all state and federal orders regarding the disaster emergency” unless there is willful misconduct, gross negligence, or recklessness.</p>	<p>Pursuant to the EO:</p> <p>“Health care facility” means “any program, institution, place, building, or agency, or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventative care to any person or person. The term includes but is not limited to facilities licensed or certified by DOH pursuant to section 321-11(1), Hawaii Revised Statutes (HRS), and others providing similarly organized services regardless of nomenclature, and any state government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak.</p>	<p>Includes AL in the listing of health care facility. But, scope appears limited to responding to COVID-19 and complying with any orders issued.</p> <p>Does not appear to cover all AL staff through professionals.</p>

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				<p>HRS 321-11(10) lists “hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster care homes, assisted living facilities, special treatment facilities and programs, home health agencies, home care agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, and therapeutic living programs.”</p> <p>“Health care professional” means physicians and surgeons and other licensed pursuant to chapter 453,” podiatrists, dentists, psychologists, nurses, veterinarians, acupuncturists, massage therapists, naturopathic physicians, chiropractors, occupational therapists, physical therapists, respiratory therapists, speech pathologists or audiologists, and pharmacists “who (i) are providing health care services at a health care facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of” HIEMA or HDOH . . . or any Executive Order or Supplementary Proclamations related to the COVID-19 outbreak.”</p>	
Idaho					
**Illinois EO	Executive Order 2020-37 (COVID-19 EO No. 35)	May 13, 2020 (Amended the other two EOS)	**NOTE: EO 2020-37 was not renewed in EO 2020-44	Health Care Facilities” means:	AL, Shared Housing, and SLF are included through the Amendment.

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	<p>Executive Order 2020-33 (COVID-19 EO No. 31)</p> <p>Executive Order 2020-19 (COVID-19 EO No. 17)</p>	<p>Amended April 30, 2020</p> <p>April 1, 2020</p>	<p>Governor Pritzker amended previous Executive Order 33 revising the immunity provided through the EO. In EO 33, Governor Pritzker now orders that health care facilities and healthcare professionals are immune from civil liability for any injury or death “relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the Health Care Facility or the Health Care Professional, which injury or death occurred at a time when a Health Care Facility or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH.”</p> <p>Does not include gross negligence or willful misconduct.</p> <p>For Health Care Facilities, “rendering assistance” must also include, consistent with guidance and recommendations from IDPH (1) conducting widespread testing of residents and widespread and regular testing of staff for COVID-19, and (2) accepting COVID-19 patients upon transfer or discharge from a Hospital or Health Care Facility.”</p> <p><i>Previously</i>, the immunity was for any injury or death alleged to have been caused by any act or omission by the facility, professional or volunteer, in the course of rendering assistance to the State by providing services, assistance, or support in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by willful misconduct of such facility, professional, or volunteer. This Order shall be in effect during the pendency of the disaster proclamation.</p> <p>Executive Order 2020-39 (COVID-19 EO No. 37) re-issued EO No. 37 through June 27, 2020. It was</p>	<p>(i) Facilities licensed, certified, or approved by any State agency and covered by the following: 77 Ill. Admin. Section 1130.215(a)-(f); University of Illinois Hospital Act, 110 ILCS 330; Alternative Health Care Delivery Act, 210 ILCS 3/35(2)-(4); Emergency Medical Services (EMS) Systems Act, 210 ILCS 50; or Department of Veterans’ Affairs Act, 20 ILCS 2805;</p> <p>(ii) State-operated Developmental Centers certified by the federal Centers for Medicare and Medicaid Services and licensed State-operated Mental Health Centers created pursuant to the Mental Health and Developmental Disabilities Administrative Act, 20 ILCS 1705/4;</p> <p>(iii) Licensed community-integrated living arrangements as defined by the Community-Integrated Living Arrangements Licensing and Certification Act, 210 ILCS 135/2;</p> <p>(iv) Licensed Community Mental Health Centers as defined in the Community Services Act, 405 ILCS 30;</p> <p>(v) Federally qualified health centers under the Social Security Act, 42 U.S.C. § 1396d(1)(2)(B); and</p> <p>(vi) Any government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak.</p>	<p>Immunity scope was reduced in EO 2020-37 (COVID-19 EO No. 35)</p> <p>Immunity was not renewed in EO 2020-44.</p>
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			not re-issued in EO 2020-44.	(vii) Supportive living facilities certified by the Illinois Department of Healthcare and Family Services pursuant to the Illinois Public Aid Code, 305 ILCS 5/5-5.01(a); and (viii) Assisted living establishments and shared housing establishments licensed by the DPH pursuant to the Assisted Living and Shared Housing Act, 219 ILCS 9.	
Indiana EO			Governor Holcomb declared a public health disaster emergency through Executive Order 20-02 . This declaration invoked immunity for persons providing services in a disaster, under Chapter 13.5 of the Indiana Code. (See below for this statute.)		
Indiana Legislation	IC 34-30-13.5-1 IN State Dept of Health April 3, 2020 Guidance		Pre-Existing Legislation – Emergency Statute IC 34-30-13.5-1 : Provides immunity to a person for “an act or omission relating to the provision of health care services in response to an event that is declared a disaster emergency under IC 10-14-3-12, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency who: “(1) has a license to provide health care services under Indiana law or the law of another state; (2) Provides a health care service: (A) within the scope of the person’s license to another person; and (B) at a location where health care services are provided during an event that is declared as a disaster.” No immunity if damages resulted from the person’s gross negligence or willful misconduct. IC 34-30-13.5-3 : “A facility or other location that is providing	Indiana State Department of Health Guidance Concerning Liability April 3, 2020 states “[t]he Indiana Code section that grants immunity to facilities does not list specific facility types that receive immunity. The immunity applies to any facility that provides health care services by a professional licensed under IN state law or the law of another state and the provision of care is in response to and during the COVID-19 emergency declaration.” Per the Guidance from Dep’t – “Healthcare services” is defined broadly for the purpose of this immunity and includes references to services provided by licensed providers, care related to hospitalization, and “any other services or food furnished for the	Appears likely AL is included, but not IL (though need clarity on both). Big question on the scope of the Immunity - appears limited to services to a COVID-19 patient or at best “in response to COVID-19” and limited to defined “health care services.”

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			health care services in response [emergency disaster event] may not be held civilly liable for an act or omission <i>relating to the provision of health care services</i> (emphasis added) in response to that event <i>by a health professional licensed</i> (emphasis added) . . . is acting during an event . . . regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency.”	purpose of preventing, alleviating, curing, or healing human illness, physical disability, or injury.”	
Iowa Legislation	COVID-19 Response and Back-to-Business Limited Liability Act	June 18, 2020	<p>Governor Reynolds signed into law Senate file 2338 which addresses evidence of medical expenses and recoverable damages for medical expenses, but also contains the COVID-19 Response and Back-to-Business Limited Liability Act which provides the following:</p> <p>“<i>Minimum medical condition</i>” means “a diagnosis of COVID-19 that requires inpatient hospitalization or results in death.”</p> <p>“<i>Health care services</i>” means “services for the diagnosis, prevention, treatment, care, cure, or relief of a health condition, illness, injury, or disease.”</p> <p>686D.3 Actual injury requirement in civil actions alleging COVID-19 exposure. “A person shall not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless one of the following applies: 1. The civil action relates to a minimum medical condition. 2. The civil action involves an act that was intended to cause harm. 3. The civil action involves an act that constitutes actual malice.”</p> <p>686D.6 Liability of health care providers. 1. A health care provider shall not be liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an</p>	<p>“Health care facility:” “means and includes all of the following: <i>a.</i> A facility as defined in section 514J.102. <i>b.</i> A facility licensed pursuant to chapter 135B. <i>c.</i> A facility licensed pursuant to Chp 135C <i>d. Residential care facilities</i>, nursing facilities, intermediate care facilities for persons with mental illness, intermediate care facilities for persons with intellectual disabilities, hospice programs, elder group homes, and <i>assisted living programs.</i>”</p> <p>“Health care professional:” “means physicians and other health care practitioners who are licensed, certified, <i>or otherwise authorized or permitted by the laws of this state to administer health care services</i> in the ordinary course of business or in the practice of a profession, whether paid or unpaid, including persons engaged in telemedicine or telehealth. “<i>Health care professional</i>” includes the employer or agent of a health care professional who provides or arranges health care.”</p>	<p>Appears to include Assisted Living within the scope of immunity provided. Health care professional also appears to cover anyone otherwise or permitted by the laws to administer “health care services, which is defined to include “services for . . . the cure [] or relief of a health condition, illness, injury, or disease.”</p>

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		<p>individual as a result of the health care provider’s acts or omissions while providing or arranging health care in support of the state’s response to COVID-19.</p> <p>This subsection shall apply to all of the following:</p> <p><i>a.</i> Injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of COVID-19.</p> <p><i>b.</i> Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of COVID-19.</p> <p><i>c.</i> 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, including any of the following:</p> <p>(1) Delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to any federal or state statute, regulation, order, or public health guidance.</p> <p>(2) Diagnosing or treating patients outside the normal scope of the health care provider’s license or practice.</p> <p>(3) Using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use.</p> <p>(4) Conducting tests or providing treatment to any individual outside the premises of a health care facility.</p> <p>(5) 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.</p> <p>(6) Acts or omissions undertaken by a health care</p>	<p>“Health care provider:” “means and includes a health care professional, health care facility, home health facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment.”</p>	
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			<p>provider relating to use or nonuse of personal protective equipment.</p> <p>2. This section shall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct.”</p> <p>The Act further provides:</p> <p>686D.4 Premises owner’s duty of care – limited liability. A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, shall not be liable for civil damages for any injuries sustained from the individual’s exposure to COVID-19, whether the exposure occurs on the premises or during any activity managed by the person who possesses or is in control of a premises, unless any of the following apply to the person who possesses or is in control of the premises:</p> <ol style="list-style-type: none"> 1. The person who possesses or is in control recklessly disregards a substantial and unnecessary risk that the individual would be exposed to COVID-19. 2. The person who possesses or is in control of the premises exposes the individual to COVID-19 through an act that constitutes actual malice. 3. The person who possesses or is in control of the premises intentionally exposes the individual to COVID-19. <p>686D.5 Safe harbor for compliance with regulations, executive orders, or public health guidance. A person in this state shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of</p>		
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			<p>care was in substantial compliance or was consistent with any federal or state statute, regulation, order, or public health guidance related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.</p> <p>Applies retroactively to January 1, 2020.</p>		
Iowa – Department of Health Order	Iowa PPE Shortage Order	April 9, 2020	<p>Director of the Iowa Department of Health enacted the Iowa PPE Shortage Order providing immunity related to PPE supply.</p> <p>Iowa PPE Shortage Order cites Iowa Code 135.147 for the position that Iowa law “contains immunity provisions protecting persons, corporations, and other legal entities, and employees and agents of such persons, corporations, and other legal entities who provide medical care or assistance in good faith under the direction of the Dep’t of Public Health during a public health disaster.”</p> <p>“A health care provider, hospital, health care facility, and any other person, corporation, or other legal entity or employees of all such entities acting in compliance with this Order, or other guidance issued by the Iowa Department of Public Health or the CDC related to optimizing PPE supply, in good faith is acting at the request of and under the direction of the Iowa Department of Public Health for purposes of the immunity provisions of Iowa Code section 135.147.”</p> <p>“Individuals, Facility, and other Entities Covered by this Order” - “All Iowa health care providers, hospitals, health care facilities, clinics, local public health agencies, medical and response organizations, and any other person or facility utilizing PPE in the care or treatment of a patient or resident are covered by this Order.”</p>	<p>“health care provider” means a person who is licensed, certified, or otherwise authorized or permitted by the laws of the state of Iowa or Gubernatorial Proclamations of Disaster Emergency issued on or after March 9, 2002, to administer health care services or treatment.”</p> <p>“health care facility” means a facility defined in Iowa Code 135C.1(7): health care facility or facility means “a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with an intellectual disability.”</p> <p>“Residential care facility” is then defined in the same code in (19) as “any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner . . .” [See link above for subsection (19) full definition.]</p> <p>“PPE” includes “protecting clothing, gloves, face shields, goggles, facemasks, respirators, gowns,</p>	Not an EO, but a PPE Shortage Order for the Dep’t of Health; related to optimizing PPE supply which then provides immunity if you are following that order.

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				aprons, coveralls, or other equipment designed to protect the wearer from injury or the spread of infection or illness.”	
Kansas	Executive Order No. 20-26	April 22, 2020	<p>Governor Kelly ordered immunity from suit pursuant to K.S.A. 48-915 for “all health care providers, including but not limited to ‘health care provider’ as defined in K.S.A. 40-3401, and also including [RNs], [APRNs], [LPNs], pharmacists, unlicensed volunteers, military personnel, or students and other support personnel and all entities or individuals referenced in K.S.A. 48-915, making clinical and triage decisions and rendering assistance, testing, care or advice in the care of patients reasonably suspected or confirmed to be infected with COVID-19, rendered in response to any Kansas Dep’t of Emergency Management mission related to the COVID-19 outbreak, and the proclamation issued declaring a state of disaster emergency pursuant to K.S.A. 48-924.”</p> <p>Does not provide immunity for any adverse event or injury caused willful misconduct, gross negligence, recklessness, or bad faith.</p> <p>This EO does not “modify, impair, or supersede State law governing legal standards, procedures or judicial interpretation used in any civil action against an entity or individual where this Order is deemed not to cover such an entity or individual because of an allegation of willful misconduct or for any other reason.” Also, the “liability protections addressed in paragraph 5 of this order are not intended to extend to medical treatment or procedures performed in the ordinary or customary course of practice.”</p>	<p>K.S.A. 40-3401 (f) defines “Health care provider” as the following categories:</p> <ul style="list-style-type: none"> - person licensed to practice health arts - medical care facility licensed by the state of KS - licensed podiatrist - HMO issued a certificate of authority by the commissioner - optometrist - pharmacist - RN anesthetist - a professional corporation organized pursuant to the professional corporation law of KS by persons who are authorized by such law to form such a corporation and who are health care providers - KS LLC organized for the purpose of rendering professional services by its members who are health care providers - Partnership of persons who are health care providers - KS nonprofit corporation organized for the purpose of rendering professional services by health care providers - Nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities assoc. with Univ. of Kansas school of medicine 	<p>Does not appear to include assisted living communities.</p> <p>In the EO Para.5 (where immunity is referenced) it refers to “health care providers.” But, in other parts of the EO it refers to “designated health care facility” which is defined within the EO – “designated health care facility” includes the entities in K.S.A. 40-3401(f) as well as “state-owned surgical centers; state-operated hospitals and veterans facilities; entities used as surge capacity by any of the” preceding facilities; “Adult Care Homes; and Any other location specifically designated by the Gov. or the Sec. of the KS Dep’t of Health and Environment to exclusively treat patients for COVID-19.</p> <p>Scope appears limited to COVID-19 (or presumed COVID-19) patients.</p>

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				<p>- Dentist certified to administer anesthetics -Psychiatric hospital -Mental health center or mental health clinic</p> <p>“Health care provider” is also defined in the K.S.A. 40-3401(f) as to what it does not include (Please see link above) – do not see a specific reference to a senior living community.</p> <p>K.S.A. 48-915 (b) “Whenever a proclamation is issued declaring a state of disaster emergency pursuant to KRS 48-924, and amendments thereto, neither the state . . . nor except in cases of willful misconduct, gross negligence or bad faith, the employees, agents, or representatives of the state or any political subdivision therefor, nor any volunteer worker, or member of any agency, engaged in any emergency management activities, complying with or reasonably attempting to comply with this act, or any proclamation, order, rule and regulation promulgated pursuant to the provisions of this act . . . shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity performed during the existence of such state of disaster emergency or other state of emergency.”</p>	
Kansas Legislation	COVID-19 Response and Re-Opening for	June 8, 2020	Gov. Kelly signed into law HB 2016 which in Section 10 provides immunity to a “healthcare provider . . . [for] civil liability for damages,	“Adult care facility” means a “nursing facility,” “assisted living facility,” or “residential healthcare	Sec. 10 immunity is to healthcare providers, but the definition of healthcare provider explicitly excludes entities licensed under Chp 39, which includes adult care

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	<p>Business Liability Protection Act</p>		<p>administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any state of disaster emergency declared pursuant to K.S.A. 48-924, and amendments thereto, related to the COVID-19 public health emergency.”</p> <p>The immunity applies to “any claim for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any state of disaster emergency declared pursuant to K.S.A. 48-924, and amendments thereto, related to the COVID-19 public health emergency.”</p> <p>No immunity “when it is established that the act, omission or healthcare decision constituted gross negligence or willful, wanton or reckless conduct.”</p> <p>Immunity also does not apply “to healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.”</p> <p>Sec. 13 addresses “adult care facility” and provides that these entities “shall have an affirmative defense to liability in a civil action for damages, administrative fines or penalties for a COVID-19 claim if such facility: (1)(A) was caused, by the facility’s compliance with a statute or rule and regulation, to reaccept a resident who had been removed from the facility for treatment of COVID-19; or (B) treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute or rule and regulation; and (2) is acting pursuant to and in substantial compliance with public health directives. [See,</p>	<p>facility” as those terms are defined in K.S.A. 39-923, and amendments thereto.”</p> <p>“Healthcare provider” means a person or entity that is licensed, registered, certified or otherwise authorized by the state of Kansas to provide healthcare services in this state, including a hospice certified to participate in the [M]edicare program . . . “Healthcare provider does not include any entity licensed under chapter 39 of the Kansas Statutes Annotated, and amendments thereto.”</p>	<p>homes, assisted living facilities, and residential health care facilities.</p> <p>Assisted living does fall within Section 13 for the ability to claim an affirmative defense in very limited situations.</p> <p>Sec. 11 could apply in some situations to give some limited protection to individual workers as it applies to “person.”</p>
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			<p>link for definition of “public health directives” – p. 6]</p> <p>Sec. 11: provides immunity to “a person, or an agent of such person, conducting business in [Kansas] . . . in a civil action for a COVID-19 claim if such person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.” This specific provision expires January 26, 2021. And, is retroactive to any cause of action accruing on or after March 12, 2020.</p> <p>Sections 10 and 13 (outlined above) apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to the termination of the state of disaster emergency, and any amendments.</p>		
Kentucky EO					
Kentucky Legislation	Senate Bill 150	March 30, 2020	Section 2 (5)(b) provides a defense to civil liability for ordinary negligence for any personal injury resulting from care or treatment, or any act or failure to act to a “health care provider” acting in good faith when rendering care/treatment to a COVID-19 patient. Provider must act as an ordinary, reasonable, and prudent health care provider would under same or similar circumstances.	“Health care provider” includes professionals who prescribe or dispenses off-label medicines to combat COVID-19, provides health care services outside of the professional scope of practice if requested by a health care facility, or utilizes equipment or supplies outside of the product’s normal use.	Applies to “providers” (not defined). Appears limited to care rendered to COVID-19 patients.
Louisiana EO	Proclamation Number 25 JBE 2020	March 11, 2020	On March 11, 2020, Governor Edwards invoked the Louisiana Health Emergency Powers Act, La. R.S. 29:760, et seq. Section 29:771 (c) of the act provides that “during a state of public health emergency, any health care provider shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.”	Section 29:762(4) of the Act defines a health care provider as any “clinic, person, corporation, facility, or institution which provides health care or professional services by a physician, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, psychologist, or psychiatrist, and any officer,	Not clear that this applies to AL Scope appears broader but is limited to “health care provider.”

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				employee, or agent thereof acting in the course and scope of his service or employment.”	
Louisiana Legislation			<p><u>Pre-Existing Legislation – Emergency Statute</u></p> <p>LA Rev Stat. 29:771(c) of the act provides that “during a state of public health emergency, any health care provider shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.” (d) includes “who renders assistance or advice at the request of the state . . .”</p>	<p>Section 29:762(4) of the Act defines a health care provider as any “clinic, person, corporation, facility, or institution which provides health care or professional services by a physician, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, psychologist, or psychiatrist, and any officer, employee, or agent thereof acting in the course and scope of his service or employment.”</p>	Clarification is needed regarding whether or not AL is covered within the statute (as providing “health care”).
Louisiana Legislation	<p>SB 435 (Act No. 362)</p> <p>HB 826 (Act No. 336)</p>	<p>June 12, 2020</p> <p>June 13, 2020</p>	<p>SB 435 (Act No. 362) was signed by Governor Edwards providing certain immunity from civil liability during state of emergencies; HB 826 (Act No. 336) was signed by Governor Edwards providing limitations of liability during the COVID-19 pandemic.</p> <p>SB 435 provides “no natural or juridical person, state or local government, or political subdivision thereof, shall be liable for damages or personal injury resulting from or related to an actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person’s, government’s, or political subdivision’s business operations unless the person . . . failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person’s . . . gross negligence or wanton or reckless misconduct.”</p> <p>Further, “if two or more sources of procedures are applicable to the business operations at the time of</p>	<p>Applies to “Natural or juridical person, state or local government, or political subdivision.”</p>	Scope appears limited to damages from an actual or alleged exposure to COVID-19.

		<p>the actual or alleged exposure, the person . . . shall substantially comply with any one applicable set of procedures.”</p> <p>Does not apply if evidence shown to be the result of gross negligence, willful misconduct, or intentional criminal misconduct.</p> <p>HB 826 provides that “[n]o natural or juridical person, state or local government, or political subdivision thereof shall be liable for any civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person’s, government’s, or political subdivision’s business operations unless the person, government, or political subdivision failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person’s, government’s, or political subdivision’s gross negligence or wanton or reckless misconduct.”</p> <p>Further, “if two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person . . . shall substantially comply with any one applicable set of procedures.”</p> <p>Also addresses immunity when “hosting, promoting, producing, or otherwise organizing an event of any kind” and there is actual or alleged exposure to COVID-19.</p> <p>Also provides immunity for use, employ, dispense, or administering of PPE unless failed to substantially comply with the applicable procedures that govern PPE and the injury or death was caused by gross negligence or wanton or reckless misconduct.</p>		
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Maine					
Maryland EO	<p>Renewal of State of Emergency Proclamation May 6, 2020</p> <p>Declaration of State of Emergency Proclamation</p>	<p>May 6, 2020</p> <p>March 5, 2020</p>	<p>In the May 6, 2020 Renewal of State of Emergency Proclamation, Governor Hogan orders that “Health care providers who act in good faith under this catastrophic health emergency proclamation, including orders issued under the proclamation by the Governor and by other State officials acting at the direction of or under delegated authority from the Governor, have immunity provided by §14-3A-06 of the Public Safety Article of the Maryland Code.”</p> <p>Original state of Emergency declared in the March 5, 2020 Proclamation.</p> <p>Governor Hogan also issued Executive Order Number 20-04-05-01 “Authorizing Various Actions Related to Nursing Homes and Other Health Care Facilities.” This Executive Order Number 20-04-05-01 references “other facilities” to mean “any Health Care Provider other than a Nursing Home, including without limitation, assisted living facilities, hospice facilities, residential treatment facilities, home health agencies, and any related institution.”</p>	<p>“Health care providers” is not defined within the Renewal of State Emergency Proclamation.</p>	
Maryland Legislation	<p>Maryland Public Safety Section 14-3A-06</p>		<p>Pre-Existing Legislation – Emergency Statute</p> <p>Maryland Code, Public Safety, section 14-3A-06 states that a healthcare provider is immune from civil or criminal liability if the health care provider acts in good faith under a catastrophic health emergency proclamation.</p>	<p>Maryland Public Safety section 14-3A-01(e) states that “health care provider” means any “health care facility or “healthcare practitioner” as defined in Maryland Code Health General section 19-114 and any individual licensed or certified as an emergency medical service provider. Maryland Code Health General section 19-114 (d)(1) defines a “health care facility” as a hospital, limited service hospital, <i>a related institution</i> as defined in §19-301,</p>	<p>Arguably includes AL as a “related institution;” doesn’t appear to cover all the staff; concern from providers that it doesn’t include IL.</p>

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				<p>ambulatory surgical facility, inpatient facility organized primarily to help in the rehab of disabled individuals, home health agency, hospice, freestanding medical facility, and any other health institution, service, or program for which this Part II of this subtitle requires a CON. Additionally, “health care practitioner” means any individual who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services.</p> <p>“Health care facility” does not include: a hospital or related institute operated, listed, or certified by the First Church of Christ Scientist, <i>a facility located on the campus of a continuing care community</i> (fee pd pursuant to agreement for an IL unit or AL unit) where the number of comprehensive care nursing beds in the community does not exceed; 24% of the number of IL units in a community having less than 300 IL units; or 20% of the number of IL units in a community having 300 or more IL units, any facility that provides VA care, a kidney disease treatment facility, or the office of 1 or more individuals licensed to practice dentistry.</p> <p>Maryland Code 19-301(o)(1) defines “related institution” as “an organized institution, environment, or home that: (i) maintains conditions or facilities and equipment to provide domiciliary, personal, or nursing care for 2 or more unrelated individuals who are dependent on the</p>	
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				<p>administrator, operator, or proprietor for nursing care for the subsistence of daily living in a safe, sanitary, and healthful environment; and (ii) Admits or retains the individuals for overnight care.” Related Institution does NOT include a nursing facility (which is defined in the Code as a “related institution that provides nursing care for 2 or more unrelated individuals).”</p> <p>“Nursing Care” means “service for a patient that is: (1) Ordered by a physician; and (2) Provided or supervised by a registered or practical nurse who is licensed to practice in this State.”</p> <p>“Personal Care” is also defined in the code (click link above)</p>	
Massachusetts PREP Act “Directive”	April 8, 2020 PREP Act Directive	April 8, 2020	<p>Governor Baker issued a directive designating “the following activities as authorized in accordance with the Commonwealth’s public health and medical response . . . :</p> <ul style="list-style-type: none"> (a) The prescription, administration, delivery, distribution, or dispensing of Covered Countermeasures by a Health Care Professional for the treatment, diagnosis, prevention, and mitigation of COVID-19; and (b) The prescription, administration, delivery, distribution, or dispensing of Covered Countermeasures as part of any program established, supervised, or administered by a Health Care Facility for the treatment, diagnosis, prevention, or mitigation of COVID-19 or as part of the Commonwealth’s response to the COVID-19 outbreak. This designation shall include 	<p>“Covered Countermeasure” has the meaning in Section VI of the Sec. of the U.S. Dep’t of Health & Human Services’ Notice of Declaration under the PREP Act for medical countermeasures.</p> <p>Covered Countermeasures “must be ‘qualified pandemic or epidemic products,’ or ‘security countermeasures,’ or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.” 85 Fed.Reg. 15202</p> <p>“Health care facility” means:</p>	<p>Includes ALRs for those PREP Act “covered countermeasures.” Limited to “covered countermeasures.”</p> <p>Does not appear to cover all unlicensed staff of an ALR.</p>

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			<p>authorization for the activities of Program Planners who supervise and administer such programs.”</p> <p>Through this designation, immunity is provided to a Health Care Professional and a Health Care Facility “from suit or civil liability for any harm caused by, arising out of, relating to, or resulting from such Professional’s or Facility’s authorized activities as defined above, except for harm caused by willful misconduct as defined in 42 U.S.C. § 247(d)-6d(c). Immunity extends to a Program Planner involved in the supervision or administration of Health Care Facility programs for the treatment, diagnosis, prevention, or mitigation of COVID-19.</p>	<ul style="list-style-type: none"> • Hospitals, licensed under s. 51 of Chp. 111 • State hospitals, mental health centers/facilities, sec. 7 of Chp 19 • Hospitals operated by the Dep’t of Public Health, chp. 62I, 69E of chp 111, and chp 122 • Psychiatric hospitals, sec 19 of chp 19 • Skilled Nursing Facilities, licensed under 71 of chp 111 • Assisted Living Residences, defined in section 1 of chp 19D • Rest Homes, sec 71 of chp 111 • Community Health Centers, 130 CMR 405.000 and Mental Health Centers, 130 CMR 429.000 • Home Health Agencies that participate in Medicare; or • A site designated by the Commissioner of Public health to provide COVID-19 health care services. <p>“Health Care Professional” means: “a licensed, registered, or certified health care or emergency worker, whether compensated or uncompensated, who (i) is providing health care services in response to the COVID-19 outbreak; or (ii) is working under the direction of the Mass. Emergency Management Agency or the Mass. Dep’t of Public Health in response to the Commonwealth’s state of emergency;</p>	
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As of July 8, 2020

				<p>provided that the Health Care Professional acts within the scope of his or her license, registration, or certification, as those licenses have been modified by EO or by Order of the Comm. of Public Health.” Includes a student or trainee in an approved program performing under supervision, and unlicensed individuals auth. to practice nursing pursuant to an order of the Comm. of Public Health.</p>	
Massachusetts Legislation	Senate Bill 2640 - Act to Provide Liability Protections for Health Care Workers and Facilities During the COVID-19 Pandemic	April 17, 2020	<p>Governor Baker enacted into law Bill S.2640 entitled “An Act to Provide Liability Protections for Health Care Workers and Facilities During the COVID-19 Pandemic.”</p> <p>Section 2 (a) Notwithstanding any general or special law to the contrary, except as provided in subsection (b), health care professionals and health care facilities shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health services during the period of the COVID-19 emergency, provided, however, that:</p> <p>(i) the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law;</p> <p>(ii) arranging for or providing care or treatment of the individual was impacted by the health care facility’s or health care professional’s decisions or activities in response to treatment conditions resulting from the COVID-19 outbreak or Covid-19 emergency rules; and</p> <p>(iii) the health care facility or health care professional is arranging for or providing health care services in good faith.</p>	<p>“Health care services”, services provided by a health care facility or health care professional, regardless of location, that involve the:</p> <ul style="list-style-type: none"> (i) treatment, diagnosis, prevention or mitigation of COVID-19; (ii) assessment or care of an individual with a confirmed or suspected case of COVID-19; or (iii) care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency. <p>“Health care facility” means: Various hospitals identified, skilled nursing facilities, assisted living residences (as defined in section 1 of Chp. 19D of the General laws, rest homes, community health centers, home health agencies that participate in Medicare, and sites designated as COVID-19 centers by commissioner of public health.</p> <p>“Health care professional” means:</p>	<p>Concerns with “Health care services” – is it limited to only COVID-19 patients or non-COVID-19 who are admitted to the facility during the pandemic?</p> <p>Facilities specifically included Assisted Living Residences.</p> <p>Health care professional includes nurses, aides, and administrators. Does not include Personal care attendants. Also includes Board members, Executives, and trustees.</p> <p>As to scope, concerned that the service provided has to be “pursuant to a COVID-19 emergency rule” and definition of health care services with the “presents” to language. But, arguably protected as long as can show the incident occurred as a result of the COVID-19 response.</p>

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			<p>(b) The immunity provided in subsection (a) shall not apply: (i) if the damage was caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by a health care facility or health care professional providing health care services; (ii) to consumer protection actions brought by the attorney general; or (iii) to false claims actions brought by or on behalf of the commonwealth.”</p> <p>Volunteer organizations are also provided immunity where the damage arises from use of the facility for the commonwealth’s response and activities related to the COVID-19 emergency (unless gross negligence, recklessness, or conduct with an intent to harm).</p> <p>Section 4. “This act shall take effect upon its passage and shall apply to claims based on acts or omissions that occur or have occurred during the effective period of the COVID-19 emergency declared on March 10, 2020 and until terminated or rescinded.”</p>	<p>“an individual, whether acting as an agent, volunteer, contractor, employee or otherwise, who is: (i) authorized to provide health care services pursuant to licensure or certification [by identified Boards]; (ii) student or trainee in approved medical professional services academic training program; (iii) nursing attendant or CNA, including an individual who is providing care as part of his or her approved nursing attendant or CNA training program; (iv) certified, accredited, or approved under chapter 111C of the General Laws to provide emergency medical services; (v) nurse and home health aide employed by home health agency that participates in Medicare; (vi) provide health care services within the scope of authority or license permitted by a COVID-19 emergency rule; or, (vii) a health care facility administrator, executive, supervisor, board member, trustee, or other person responsible for directing, supervising or managing a health care facility or its personnel.</p>	
Michigan	<p>Executive Order 2020.61</p> <p>Executive Order 2020.30</p>	<p>April 26, 2020</p> <p>March 29, 2020</p>	<p>EO 2020.61 rescinded EO 2020.30. In this new EO, Governor Whitmer ordered that “[c]onsistent with MCL 30.411 (4), any licensed health care professional or designated health care facility that provides medical services in support of this state’s response to the COVID-19 pandemic is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained, unless it is established that such injury or death was caused by the gross negligence, as defined in MCL 30.411(9), of such health care</p>	<p>EO 2020.61 defines “Designated health care facility” as “the following facilities, including those which may operate under shared or joint ownership:</p> <ul style="list-style-type: none"> a. The entities listed in section 20106(1) of the Public Health Code, MCL 333.20106(1) b. State-owned surgical centers c. State-operated outpatient facilities 	<p>EO 2020.61 does not appear to change the entities within the “designated health care facility” under the prior EO 2020.30.)</p> <p>Appears to cover Home for the Aged (one AL licensure), but does not appear to include the other AL licensures.</p> <p>Scope appears limited to medical services “in support of the state’s response to the COVID-19 pandemic.”</p>

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			<p>professional or designated health care facility.” (Emphasis added to reflect revision from prior EO 2020.30)</p> <p>Order is effective immediately and continues through the end of the declared states of emergency and disaster.</p>	<p>d. State-operated veterans facilities</p> <p>e. Entities used as surge capacity by any of the entities listed in subsections (a)-(d) of this section</p> <p>Sec. 20106 (1) lists the entities including home for aged, hospital, nursing home, hospice, and hospice residence.</p> <p>(Does not appear to change the entities within the “designated health care facility” under the prior EO 2020.30.)</p>	
Minnesota					
Mississippi	Executive Order No. 1471	April 10, 2020	<p>Governor Reeves ordered that any Healthcare Professional or Healthcare Facility is immune for civil liability for any injury or death alleged to have been sustained while providing healthcare services “including, but not limited to, screening, assessing, diagnosing, treating patient for COVID-19 or otherwise acting in support of the State’s COVID-19 response, including but not limited to acts or omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic that renders the Healthcare Professional or Healthcare Facility unable to provide the level of manner of care that otherwise would have been required in the absence of the COVID-19 pandemic.</p> <p>Does not immune acts that constitute a crime, fraud, malice, reckless disregard, willful</p>	<p>Per the EO: “Healthcare Facilities” means “(a) licensed or state approved hospitals, clinics, nursing homes, mental health centers, field hospitals, or (b) other facilities designated by MSDH or MEMA for temporary use for the purposes of providing <i>healthcare services in support of the State’s COVID-19 response.</i>” (Emphasis added)</p> <p>“Healthcare professional” means “an individual who is licensed, registered, permitted, or certified in any state in the U.S. to provide health care services, whether paid or unpaid, or any volunteer approved by MSDH or</p>	<p>Does not appear to include AL</p> <p>Professional appears to not include all AL staff types.</p> <p>Not clear what “healthcare services” include as to scope.</p>

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			<p>misconduct, or would otherwise constitute a false claim.</p> <p>In effect until May 15, 2020.</p> <p>Renewed through EO No. 1485 through May 31, 2020.</p> <p>Renewed through EO No. 1494 through June 15, 2020.</p> <p>Renewed through EO No. 1497 through July 1, 2020.</p>	<p>MEMA who (i) is providing <i>health care services</i> at a Healthcare Facility in response to the COVID-19 outbreak and is authorized to do so; or (ii) is working under the direction of MEMA or MSDH in response to the March 14, 2020 Disaster Proclamation.” (Emphasis added)</p>	
Missouri					
Montana					
Nebraska					
New Hampshire	<p>Attorney General Opinion No. 2020-01</p>	<p>April 22, 2020</p>	<p>Attorney General MacDonald issued an official Attorney General Opinion to the Department of Health and Human Services that:</p> <p>(a) “health facilities, and their employees and volunteers, engaged in emergency management activities, as defined in RSA 21-P:35, V, when they, in turn, took reasonable steps to implement state of emergency orders, rules, and waivers that prepared the State to adequately treat patients and to prevent the overburdening of existing resources.”</p> <p>And (b) “the immunity provisions of RSA 21-0:41 apply to health facilities, and their employees and volunteers, that engage in emergency management activities so long as the health facility and its employee or volunteer was complying with or reasonably attempting to comply with applicable state of emergency orders or rules.”</p> <p>RSA 21-P:35, V defines “emergency management” as “the preparation for and the carrying out of all emergency functions, including</p>	<p>“health facilities” are identified within the Opinion as “acute care hospitals, assisted living facilities, long-term care facilities, nursing facilities, residential care facilities, as those terms are defined in RSA 151-151-H, or any other similar facilities providing residential care to elderly or infirm patients.”</p>	<p>Per the AG Opinion, AL appear to be included; scope appears to be limited to emergency management activities.</p>

As of July 8, 2020

			<p>but not limited to emergency response and training functions, to prevent, minimize, and repair injury or damage resulting from the occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or human cause, including but not limited to fire, flood, earthquake . . . requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infections, explosion, terrorist act, or riot.”</p> <p>RSA 21-0:41 (I) provides that “. . . all other activities relating to emergency management are hereby declared to be governmental functions. Neither the state nor . . . any private corporations, organizations, or agencies, nor any emergency management worker complying with or reasonably attempting to comply with this subdivision, or any order or rule adopted or regulation promulgated pursuant to the provisions of this subdivision, or pursuant to any ordinance relating to precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of such activity.”</p>		
Nevada	Declaration of Emergency Directive 011	April 1, 2020	<p>Governor Sisolak ordered in Section 10 of the Declaration that “all providers of medical services related to COVID-19 are performing services for emergency management subject to the order or control of and at the request of State Government and shall be afforded the immunities and protections set forth in NRS 414.110, subject to the same exclusions therein.” No immunity for willful misconduct, gross negligence, or bad faith.</p>	<p>NRS 414.110 provides immunity for any worker, State, political subdivision or other agencies of the State.</p> <p>NRS 414.110 defines “worker” as full-time or part-time paid, volunteer or auxiliary employee of the State.</p>	<p>Limited to “providers of medical services” and “related to COVID-19.”</p> <p>Appears to be limited to individuals unless “agencies of the State” can include organizations/entities through the EO. It is believed at this time that it only applies to healthcare workers and not facilities.</p>
New Hampshire	Executive Order 2020-04 Attorney General	April 22, 2020	<p>Governor Sununu’s Executive Order 2020-04 Section 5 cites to the emergency management statute.</p> <p>Attorney General MacDonald issued an official</p>	<p>“health facilities” are identified within the Opinion as “acute care hospitals, assisted living facilities, long-term care facilities, nursing facilities, residential care facilities, as</p>	<p>Per the AG Opinion, AL appear to be included; scope appears to be limited to emergency management activities.</p>

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	<p>Opinion No. 2020-01</p>		<p>Attorney General Opinion to the Department of Health and Human Services that:</p> <p>(a) “health facilities, and their employees and volunteers, engaged in emergency management activities, as defined in RSA 21-P:35, V, when they, in turn, took reasonable steps to implement state of emergency orders, rules, and waivers that prepared the State to adequately treat patients and to prevent the overburdening of existing resources.”</p> <p>And (b) “the immunity provisions of RSA 21-0:41 apply to health facilities, and their employees and volunteers, that engage in emergency management activities so long as the health facility and its employee or volunteer was complying with or reasonably attempting to comply with applicable state of emergency orders or rules.”</p> <p>RSA 21-P:35, V defines “emergency management” as “the preparation for and the carrying out of all emergency functions, including but not limited to emergency response and training functions, to prevent, minimize, and repair injury or damage resulting from the occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or human cause, including but not limited to fire, flood, earthquake . . . requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infections, explosion, terrorist act, or riot.”</p> <p>RSA 21-0:41 (I) provides that “. . . all other activities relating to emergency management are hereby declared to be governmental functions. Neither the state nor . . . any private corporations, organizations, or agencies, nor any emergency management worker complying with or reasonably attempting to comply with this subdivision, or any order or rule adopted or regulation promulgated pursuant to the provisions</p>	<p>those terms are defined in RSA 151-151-H, or any other similar facilities providing residential care to elderly or infirm patients.”</p>	
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As of July 8, 2020

			of this subdivision, or pursuant to any ordinance relating to precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of such activity.”		
New Jersey EO	Executive Order 112	April 1, 2020	<p>Governor Murphy granted all healthcare professionals and healthcare facilities, licensed in the state of New Jersey, immunity from civil liability for any damages alleged to have been sustained as a result of the individual’s acts or omissions undertaken in good faith, in the course of providing healthcare services in support of the State’s COVID-19 response. This includes acts or omissions- whether or not within the scope of the licensee’s practice. Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.</p> <p>8. “Any individual holding a license, certificate, registration or certification to practice a healthcare profession or occupation in New Jersey, including but not limited to any advanced practice nurse or physician assistant acting outside the scope of their ordinary practice pursuant to paragraph 3 or 4 of this Order, shall be immune from civil liability for any damages alleged to have been sustained as a result of the individual’s acts or omissions undertaken in good faith in the course of providing healthcare services in support of the State’s COVID-19 response . . . Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.”</p> <p>9. “Any healthcare facility, within the meaning of N.J.S.A. 26:13-2, any modular field treatment facility, and any other site designated by the Commissioner of the Department of Health for temporary use for the purpose of providing essential services in support of the State’s</p>	<p>Para. 7 – gives immunity to those granted a temporary license/certification/etc. during this time.</p> <p>Para. 8 – gives immunity to anyone holding a license, certificate, registration, or certificate to practice a healthcare profession or occupation.</p> <p>Para. 9 - gives immunity to “Healthcare facility” but only within the meaning of NJSA 26:13-2. That definition does not specifically include AL (could be due to dates of when AL Act enacted). Arguably could include AL (per affiliate read) because of the “includes, but is not limited to” language.</p> <p>Section 26-13-2 (NJSA 26:13-2) - "Health care facility" means any non-federal institution, building or agency, or portion thereof whether public or private for profit or nonprofit that is used, operated or designed to provide health services, medical or dental treatment or nursing, rehabilitative, or preventive care to any person. Health care facility includes, but is not limited to: an ambulatory surgical facility, home health agency, hospice, hospital, infirmary, intermediate care facility,</p>	<p>Does not explicitly include AL – AL doesn’t appear to fall within the NJSA 26:13-2 statute; however, there is language of “includes, but not limited to” that arguable AL could fall within. Affiliate and Affiliate counsel believes AL is covered here. Affiliate indicates that in NJ, ALs are regulated by statute and regulation as health care facility, and, as a result, fit within the definition of “health care facility.”</p> <p>Scope also appears limited to “in support of the State’s COVID-19 response.” And, healthcare facility immunity appears to be limited to when the agent has immunity (those in Para. 8).</p>

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			<p>COVID-19 response . . . shall be immune from civil liability for any damages alleged to have been sustained as a result of the an act or omission undertaken in good faith in the course of providing services in support of the State’s COVID-19 response by one or more of its agents, officers, employees, servants, representatives or volunteers, if, and to the extent, such agent, officer, employee, servant, representative or volunteer is immune from liability.</p>	<p>dialysis center, long-term care facility, medical assistance facility, mental health center, paid and volunteer emergency medical services, outpatient facility, public health center, rehabilitation facility, residential treatment facility, skilled nursing facility, and adult day care center. Health care facility also includes, but is not limited to, the following related property when used for or in connection with the foregoing: a laboratory, research facility, pharmacy, laundry facility, health personnel training and lodging facility, patient, guest and health personnel food service facility, and the portion of an office or office building used by persons engaged in health care professions or services.</p>	
<p>New Jersey Legislation</p>	<p>S. 2333/A-3910</p>	<p>April 14, 2020</p>	<p>Governor Murphy enacted S. 2333 providing immunity “to all medical personnel supporting the COVID-19 response.” It does not provide immunity for “medical care rendered in the ordinary course of medical practice” or “medical services, treatment, and procedures that are unrelated to the COVID-19 emergency.”</p> <p>“a health care professional shall not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by the health care professional in the course of providing medical services in support of the State's response to the outbreak of coronavirus disease during the public health emergency . . . ;</p>	<p>"Health care facility" means any healthcare facility as defined in section 2 of P.L.2005, c.222 (C.26:13-2) [same def. as under EO, above], and any modular field treatment facility and any other site designated by the Commissioner of Health for temporary use for the purpose of providing essential services in support of the State's response to the outbreak of coronavirus disease during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020.</p>	<p>Does not explicitly include AL – AL doesn’t appear to fall within the NJSA 26:13-2 statute; however, there is language of “includes, but not limited to” that arguable AL could fall within. Affiliate and Affiliate counsel believes AL is covered here. Affiliate indicates that in NJ, ALs are regulated by statute and regulation as health care facility, and, as a result, fit within the definition of “health care facility.”</p> <p>Scope also appears limited to “in support of the State’s COVID-19 response.” And, healthcare facility immunity appears to be limited to when the agent has immunity (those in Para. 8).</p>

			<p>and (2) a health care facility or a health care system that owns or operates more than one health care facility shall not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by one or more of its agents, officers, employees, servants, representatives or volunteers, if, and to the extent, such agent, officer, employee, servant, representative or volunteer is immune from liability pursuant to paragraph (1) of this subsection.”</p> <p>“Immunity shall also include any act or omission undertaken in good faith by a health care professional or healthcare facility or a health care system to support efforts to treat COVID-19 patients and to prevent the spread of COVID-19 during the public health emergency . . . , including but not limited to engaging in telemedicine or telehealth, and diagnosing or treating patients outside the normal scope of the health care professional's license or practice. The immunity granted pursuant to this subsection shall not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct, and shall be retroactive to March 9, 2020.”</p> <p>“Notwithstanding the provisions of any law, rule, or regulation to the contrary, a health care facility or a health care system that owns or operates more than one health care facility shall not be</p>	<p>"Health care professional" means a physician, physician assistant, advanced practice nurse, registered nurse, licensed practical nurse, or other health care professional whose professional practice is regulated pursuant to Title 45 of the Revised Statutes or who is otherwise authorized to provide health care services in this State, an emergency medical technician or mobile intensive care paramedic certified by the Commissioner of Health pursuant to Title 26 of the Revised Statutes or who is otherwise authorized to provide health care services in this State, and a radiologic technologist regulated pursuant to Title 26 of the Revised Statutes or who is otherwise authorized to provide health care services in this State.</p>	
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			<p>criminally or civilly liable for damages for injury or death alleged to have been sustained as a result of an act or omission by the facility or system or one or more of the facility's or system's agents, officers, employees, servants, representatives or volunteers during the public health emergency . . . in connection with the allocation of mechanical ventilators or other scarce medical resources, if the health care facility or system adopts and adheres to a scarce critical resource allocation policy that at a minimum incorporates the core principles identified by the Commissioner of Health in an executive directive or administrative order, and the health care facility's or system's agents, officers, employees, servants, representatives and volunteers shall not be civilly or criminally liable for an injury caused by any act or omission pursuant to this subsection during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 pursuant to, and consistent with, such policy.”</p>		
New Mexico					
New York EO	Executive Order 202.10	March 23, 2020	Governor Cuomo ordered that all medical professionals will be immune from civil liability for any injury or death alleged to have been sustained as a result of an act or omission by such medical professional in the course of providing	Physicians, physician assistants, specialist assistants, nurse practitioners, RNs, LPNs are identified to enjoy the immunity. (no	Applies to providers and not to SNF/AL/IL directly. Also appears limited to “in support of the State’s response”

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			<p>medical services in support of the State’s response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional. This Order remains in effect through April 22, 2020.</p> <p>“I hereby temporarily suspend or modify . . . through April 22, 2020, the following: . . . Subdivision (2) of section 6527, Section 6545, and Subdivision (1) of Section 6909 of the Education Law, to the extent necessary to provide that all physicians, physician assistants, specialist assistances, nurse practitioners, licensed registered professional nurses, and licensed practical nurses shall be immune from civil liability for any injury or death . . .”</p> <p>Also provides immunity to health care providers for recordkeeping requirements “to the extent necessary for health care providers to perform tasks as may be necessary to respond to the COVID-19 outbreak.”</p> <p>It appears the immunity provision of EO 202.10 expired on May 8, 2020 <i>see</i>, Link.</p>	<p>entities)</p>	
<p>New York Legislation</p>	<p>Article 30D - Emergency Disaster Treatment Protection Act</p>	<p>March 7, 2020</p>	<p>Enacted on April 6, 2020, this Act is retroactive to March 7, 2002 and provides immunity to any health care facility or health care professional, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services IF:</p> <ul style="list-style-type: none"> (a) Arranging for or providing health care services pursuant to a COVID-19 emergency rule of otherwise in accordance with applicable law; (b) The act or omission occurs in the course of arranging for or providing health care services and the treatment of the individual 	<p>“Health care professional” means: “an individual, whether acting as an agent, volunteer, contractor, employee, or otherwise, who is: licensed [under various sections], a nursing attendant or certified nurse aide . . ., licensed or certified under article 30 to provide emergency medical services, home care services worker . . ., providing health care services within the scope of authority permitted by a COVID-19 emergency rule, or a health care facility administrator, executive, supervisor, board member, trustee, or other</p>	<p>Grants qualified immunity to hospitals, nursing homes, administrators, board members, physicians, nurses – does not include AL.</p> <p>Issue with scope on what “health care services” includes – “present at” – does that mean it only covers immunity if admitted to AL during this time period? [Same issue with Mass.]. (a) and (b) of the definition appear to be related to COVID-19 treatment only. (c) is the broader one, but concerned with the “present at” lang.</p> <p>Question with scope – the “and” – does (a) mean that the services provided have to be connected to COVID-19 (and not just normal AL services provided in the</p>

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			<p>is impacted by the health care facility’s or health care professional’s decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state’s directives; and</p> <p>(c) The health care facility or health care professional is arranging for or providing health care services in good faith.</p> <p>Immunity does not apply to intentional criminal misconduct, gross negligence, and other such acts</p> <p>“Health care services” means “services provided by a health care facility or health care professional, regardless of the location where those services are provided, that relate to: (a) the diagnosis, prevention, or treatment of COVID-19; (b) the assessment or care of an individual with a confirmed or suspected case of COVID-19; or (c) the care of any other individual <i>who present at</i> a health care facility or to a health care professional during the period of the COVID-19 emergency declaration.” (Emphasis added)</p>	<p>person responsible for directing, supervising, or managing a health care facility and its personnel or other individual in a comparable role.”</p> <p>“Health care facility” means: hospital, nursing home, or other facility licensed or authorized to provide health care services for any individual under article twenty-eight of this chapter, article sixteen and article thirty-one of the mental hygiene law or under a COVID-19 emergency rule.”</p> <p>Article 28 = hospital, nursing homes, and diagnostic treatment centers.</p> <p>Article 16 = looks like mental health facilities / clinics or developmental disability facilities (which is consistent with how linked with Article 31)</p> <p>Article 31 = mental health facilities</p> <p>Option to get in through – “under a COVID-19 emergency rule” – would need an emergency rule published to state that AL is included under the protections.</p> <p>**Proposed Legislation to amend – still looks to have the same limitations on facilities – doesn’t include AL</p>	<p>environment that is impacted by COVID-19??</p> <p>Note the preamble:</p> <p>“It is the purpose of this article to promote the public health, safety, and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency.” (Emphasis added)</p> <p>**Proposed Legislation: appears to still have an issue with scope of facilities included – not seeing AL included.</p> <p>Same issue with scope as to “in support of State’s response.” and appears form the language we were sent to be limited to the treatment of COVID-19 patients. (see below) – would need to see the full version.</p>
North Carolina EO	Executive Order No. 130	April 8, 2020	Governor Cooper ordered pursuant to N.C. Gen. Stat. § 166A-46, officers and employees and emergency management workers as defined in	The immunity only applies to individuals.	This appears limited to individuals and limited to providing emergency services. As to staff – not clear it covers aides b/c of the “otherwise authorized . . . to

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			<p>N.C. Gen. Stat. § 166A-19.60(e) are considered agents of the State of N.C. for tort liability and immunity purposes; shall not be liable for any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used to attempt to render said aid.</p> <p>“good faith” does not include willful misconduct, gross negligence, or bad faith.</p> <p>The Order remains in effect for sixty days, unless rescinded or replaced with a superseding Order.</p> <p>EO 130 extended, except certain sections not involving the immunity section, through June 26, 2020 in EO 139.</p>	<p>The EO outlines the definition of “emergency management worker” (see below) and then states that “all persons who are licensed or otherwise authorized under this [EO] to perform professional skills in the field of health care are hereby requested to provide emergency services . . . and “to the extent they are providing emergency services” are “emergency management workers.”</p> <p>“emergency management worker” includes “any full or part-time aide, volunteer, or auxiliary employee of this State or other states . . .” and includes “any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Management Services and any person performing emergency health care services under G.S. 90-12.2. [recodified as G.S. 90-12.5].</p>	<p>perform professional skills in the field of health care.”</p>
<p>North Carolina Legislation</p>	<p>Emergency or Disaster Treatment Protection Act</p>	<p>May 4, 2020</p>	<p>Governor Cooper signed into law Senate Bill 704 which amends the Emergency or Disaster Treatment Protection Act in subpart IIID, Section 3D.7.(a) to provide for “Health Care Liability Protection for Emergency or Disaster Treatment.”</p> <p>§90-21.133. Immunity: “Notwithstanding any law to the contrary . . . any health care facility, health care provider, or entity that has legal responsibility for the acts or omissions of a health care provider shall have immunity from any civil liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services only if all of the</p>	<p>“Health care facility” is defined as “any entity licensed pursuant to Chapter 122C, 131D, or 131E of the General Statutes or Article 64 of Chapter 58 of the General Statutes, and any clinical laboratory certified under the federal [CLIA] in section 353 of the Public Health Service Act (42 U.S.C. § 263a).”</p> <ul style="list-style-type: none"> a. Chp 122C: Mental Health, Developmental Disabilities, and Substance Abuse facilities b. Chp 131D: Adult Care Homes. Includes assisted 	<p>Appears to include AL and scope appears broader than others to include services impacted by COVID-19.</p>

			<p>following apply:</p> <ul style="list-style-type: none"> (1) The health care facility, health care provider, or entity is arranging for or providing health care services during the period of the COVID-19 emergency declaration, including, but not limited to, the arrangement or provision of those services pursuant to a COVID-19 emergency rule. (2) The arrangement or provision of health care services is impacted, directly or indirectly: <ul style="list-style-type: none"> (a) By a health care facility, health care provider, or entity’s decisions or activities in response to or as a result of the COVID-19 pandemic; or (b) By the decisions or activities, in response to or as a result of the COVID-19 pandemic, of a health care facility or entity where a health care provider provides health care services. (3) The health care facility, health care provider, or entity is arranging for or providing health care services in good faith. <p>Immunity does not apply if gross negligence, reckless misconduct, or intentional infliction of harm; but, “acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered to be gross negligence, reckless misconduct, or intentional infliction of harm.”</p> <p>“Health care service” means “[t]reatment, clinical direction, supervision, management, or administrative or corporate service, provided by a health care facility or a health care provider during the period of the COVID-19 emergency declaration . . . :</p> <ul style="list-style-type: none"> (a) To provide testing, diagnosis, or treatment of a health condition, illness, injury, or disease related to a confirmed or suspected 	<p>living residence.</p> <ul style="list-style-type: none"> c. Chp 131E: Health Care Facilities. Includes hospitals, nursing homes including skilled nursing and intermediate care, adult care homes for the aged and disabled, etc. <p>“Health care provider” is defined as:</p> <ul style="list-style-type: none"> (a) “an individual who is licensed, certified, or otherwise authorized under Chp. 90 or 90B . . . to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program. (b) A health care facility where health care services are provided to patients, residents, or others to whom such services are provided as allowed by law. (c) Individuals licensed under Chp 90 of the General Statutes or practicing under a waiver in accordance with G.S. 90-12.5. (d) Any emergency medical services personnel as defined in G.S. 131E-155(7). (e) Any individual providing health care services within the scope of authority permitted by a COVID-19 emergency rule. (f) Any individual who is employed as a health care facility administrator, executive, supervisor, board 	
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			<p>case of COVID-19.</p> <p>(b) To dispense drugs, medical devices, medical appliances, or medical goods for the treatment of a health condition, illness, injury, or disease related to a confirmed or suspected case of COVID-19.</p> <p>(c) To provide care to any other individual who presents or otherwise seeks at or from a health care facility or to a health care provider during the period of the COVID-19 emergency declaration.”</p> <p>Effective as of date the legislation becomes law and applies to acts or omissions occurring during the time of Executive Order No. 116 issued on March 10, 2020 and any subsequent time period during which a state of emergency is declared to be in effect in 2020 by the Governor in response to COVID-19.</p>	<p>member, trustee, or other person in a managerial position or comparable role at a health care facility.</p> <p>(g) An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services.</p> <p>(h) An officer or director of a health care facility.</p> <p>(i) An agent of employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services.”</p>	
North Dakota					
Ohio					
Oklahoma	Third Amended Executive Order 2020-13	April 20, 2020	<p>Governor Stitt ordered that any healthcare provider or health care facility, as defined by 63 O.S. § 6104, or any alternate care location designated by the state, “be treated as an individual or business, respectively, within the meaning of, and as covered by 76 O.S. § 5.9.”</p> <p>76 O.S. § 5.9 states “any individual, business, church or school that renders emergency care, aid, shelter or other assistance during a natural disaster or catastrophic event shall not be liable for damages resulting from the rendering of emergency care, aid, shelter or assistance unless the damage was caused by the gross negligence or willful or wanton misconduct of the individual or entity rendering the emergency care, aid, shelter or assistance.”</p>	<p>Applies to “healthcare provider” or “health care facility” as defined in 63 O.S. § 6104.</p> <p>63 O.S. § 6104(5) defines “health care facility” as a “nonfederal institution, building or agency or portion therefor, whether public or private or for nonprofit, <i>that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventative care</i> to any person or persons. <i>This includes, but is not limited to,</i> ambulatory surgical facilities, hospitals, infirmaries, intermediate care facilities, kidney dialysis centers, long-term care facilities, mental health centers,</p>	<p>Discussion with outside counsel and affiliate is that assisted living is treated as a “long-term care facility” and are permitted to provide “intermittent skilled nursing” so they believe would fall within those facilities identified in 63 O.S. §6104(5).</p>

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				<p>outpatient facilities, public health centers, rehabilitation facilities, residential treatments facilities, skilled nursing facilities, special care facilities, medical laboratories, and adult day-care centers. <i>This also includes, but is not limited to,</i> the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices and office buildings for persons engaged in health care professions or services.” (Emphasis added).</p> <p>“Health care provider” means “any person or entity who provides health care services including, but not limited to, physicians, pharmacists, dentists, physician assistances, nurse practitioners, registered or other nurses, paramedics, emergency or medical laboratory technicians, and ambulance and emergency medical workers.”</p>	
Oklahoma Legislation	COVID-19 Public Health Emergency Limited Liability Act	May 12, 2020	<p>Governor Stitt enacted Senate Bill 300, known as the “COVID-19 Public Health Emergency Limited Liability Act” providing immunity for health care facility or health care provider “from civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission by the facility or provider that occurs during the COVID-19 public health emergency, if:</p> <ol style="list-style-type: none"> 1. The act or omission occurred in the course of arranging for or providing COVID-19 health care services for the treatment of the 	<p>“Health care facility” and “health care provider” shall have the same meaning as such terms are defined as provided in Section 6104 of Title 63 of the Oklahoma Statutes</p> <p>§63-1-6104 (5) (see definition above in the EO row).</p> <p>“Health care services” means any services provided by a health care facility, health care provider, or by an</p>	

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			<p>person who was impacted by the decisions, activities or staffing of, or the availability or capacity of space or equipment by, the health care facility or provider in response to or as a result of the COVID-19 public health emergency; and</p> <p>2. The act or omission was not the result of gross negligence or willful or wanton misconduct of the health care facility or health care provider rendering the health care services.”</p> <p>No immunity “for an act or omission in the provision of health care services to a person who did not have a suspected or confirmed diagnosis of COVID-19 at the time of the services.”</p> <p>Applies to any civil action filed on or after the effective date of the act. And, provisions in effect until October 31, 2020, or until such time as the Governor affirmatively concludes the emergency declarations . . . whichever is later.</p>	<p>individual working under the supervision of a health care facility or provider, that relate to the diagnosis, assessment, prevention, treatment, aid, shelter, assistance, or care of illness, disease, injury, or condition.”</p>	
Oregon					
Pennsylvania	Executive Order	May 6, 2020	<p>Governor Wolf signed an Executive Order invoking 35 Pa.C.S. §§ 7704(a) and (b) immunity for “any person, firm, corporation, or an agent or employee of any of them engaged in disaster services activities shall be liable for the death of or any injury to a person or for loss or damage to property as a result of that activity.”</p> <p>The EO further “hereby designates the following classifications of individuals as agents of the Commonwealth solely and exclusively for purposes of immunity from civil liability due to emergency services activities or disaster services activities only as related to the Commonwealth’s COVID-19 disaster emergency response . . . :</p> <ul style="list-style-type: none"> Any individual who holds a license, certificate, registration or certification or is 	<p>The May 6, 2020 Press Release from the Gov’s office reports the EO “extends immunity to . . . any nursing facility, personal care home, assisted living facility or alternate care site . . . used for the purpose of conducting emergency services activities or the provision of disaster services activities related to [PA’s] COVID-19 disaster emergency response.”</p> <p>35 PA Code Sec. 7012 defines “Emergency Services”</p> <p>No definition for “Disaster services” but there is for “disaster emergency management services” in 35 PA Code</p>	<p>Entities appear to be afforded coverage only for “disaster services;” Individuals appear to be afforded for “emergency services activities” or “disaster services activities” and there is an exclusion for non-COVID-19 treatment and services.</p>

			<p>otherwise authorized to practice a health care profession or occupation in [PA], and who is engaged in emergency services activities or the provision of disaster services activities related to [PA's] COVID-19 disaster emergency response . . . in the following types of facilities and care settings:</p> <p>Any health care facility, within the meaning of section 802a of the Health Care Facilities Act, 35 P.S. § 448.802a, any nursing facility personal care home as defined in 55 Pa. Code § 2600.4 and assisted living facility, as defined in 55 Pa. Code § 2800.4 engaged in emergency services activities or the provision of disaster services activities related to [PA's] disaster emergency response . . .; or</p> <p>Any alternate care site, community-based testing site, or non-congregate care facility used for the purpose of conducting emergency services activities or the provision of disaster services activities related to [PA's] COVID-19 disaster emergency response . . .”</p> <p>“The designation is without regard for whether such individuals receive remuneration. <i>The aforementioned classifications of individuals (and not the facilities or entities themselves) shall be immune from civil liability and shall not be liable for the death of or any injury to a person or for loss of damage to property</i> as a result of the emergency services activity or disaster services activity described above, except in the cases of willful misconduct or gross negligence . . . This grant of immunity shall not extend to health care professionals rendering non-COVID-19 medical and health treatment or services to individuals.” (Emphasis added)</p>	<p>Sec. 7504 (a).</p>	
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Rhode Island	Executive Order 20-33 Thirtieth Supplemental Emergency Declaration	May 8, 2020	<p>Governor Raimondo’s Thirtieth Supplemental Emergency Declaration provides clarification on the “statutory immunity for responding hospitals, health care workers, and others.” Specifically, the Declaration provides that the “following are deemed and/or affirmed to be ‘disaster response workers’ entitled to immunity under R.I. Gen. Laws 30-15-15(a) and to provide services beyond or without a license as permitted by R.I. Gen. Laws 30-15-15(b):</p> <p>a. All persons and organizations subject to this Order solely to the extent their health care and/or personal assistance practices and/or protocols have been altered in order to test for, treat, contain, or minimize the risk of contracting or spreading COVID-19. ‘Persons and organizations subject to this Order’ include but are not limited to health care entities, health care professionals and <i>health care workers</i> providing community-based health care, long term care, congregate care, services at alternative hospitals and services in existing hospitals, nursing facilities, <i>assisted living residences</i>, home health care, hospice, adult day care and PACE organizations . . .” (Emphasis added).</p> <p>No immunity for (a) “negligence of any person or organization not deemed and/or affirmed a disaster response worker in Section 9(a) above; or (b) willful misconduct, gross negligence or bad faith . . .”</p> <p>Immunity provisions of this EO “apply to all acts covered therein that occurred during the pendency of this Executive Order.” And, the EO is effective the date of the EO through June 7, 2020, unless renewed, modified, or terminated . . .”</p> <p>Extended by EO 20-42.</p>	<p>“Persons and organizations subject to this Order’ include but are not limited to health care entities, health care professionals and <i>health care workers</i> providing community-based health care, long term care, congregate care, services at alternative hospitals and services in existing hospitals, nursing facilities, <i>assisted living residences</i>, home health care, hospice, adult day care and PACE organizations . . .” (Emphasis added).</p>	<p>AL is identified in Paragraph 9.</p> <p>Scope identifies “health care and/or <i>personal assistance</i> practices and/or protocols. Further, Scope is limited to “altered in order to test for, treat, contain, or minimize the risk of contracting or spreading COVID-19.”</p> <p>Appears to not be retroactive and the immunity from this EO applies from date of this EO forward.</p>
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Rhode Island	Executive Order 20-21	April 10, 2020	<p>Governor Raimondo ordered that the following are “deemed and/or affirmed to be ‘disaster response workers’ entitled to immunity under R.I. Gen. Laws §30-15-15(a) . . .</p> <ul style="list-style-type: none"> a. “all persons and organizations subject to this Order, including health care workers providing community-based health care, services . . . nursing facilities and alternative nursing care sites. However, nothing in this Order provides immunity to such persons and organizations, including health care workers, for negligence that occurs in the course of providing patient care to patients without COVID-19 whose care has not been altered by the existence of this disaster emergency. b. The landlords making the surge hospital locations and alternative nursing care sites available . . . , plus their employees, management companies and contractors providing services to construct, operate, or decommission the surge hospital locations.” (Emphasis added) 	<p>“persons and organizations subject to this Order”</p> <p>R.I. Gen. Laws §30-15-15(d) defines “disaster response worker” as “any full or part-time paid, volunteer, or auxiliary employee of this state . . . or any agency or organization, or any private person, firm, or corporation performing disaster response services at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof.”</p>	<p>Ambiguity whether AL is included. No definition for “community-based health care.”</p> <p>But, No. 4 of the EO provides that if a hospital cannot provide care, patients “may be transferred to the nearest hospital location or <i>other appropriate setting with the capacity to provide care at the community standard at the time</i>, subject to patient choice.” Arguably, if an AL is one of the chosen sites, could fall under the “organizations subject to this Order.”</p> <p>Scope also appears arguably limited to COVID-19.</p>
South Carolina					
South Dakota					
Tennessee	Executive Order 53	July 1, 2020	<p>Gov. Lee entered Executive Order 53 providing COVID-19 limited liability protections to health care providers. Specifically, health care providers “shall not be liable for any illness, injury, death or damages related to the contraction of, or suspected contraction of, COVID-19 alleged to have been caused by the acts or omissions within the limits of the provider’s license, certification, registration, or authorization, including but not limited to acts or omissions resulting from lack of resources attributable to or arising out of the provider’s response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would</p>	<p>“Health care provider” is defined as providers “licensed, certified, or authorized under titles 33, 63, or 68, who render services within the limits of their license, certification, or authorization.”</p> <p>Title 68 appears to cover nursing homes, hospitals, assisted living, and adult care homes.</p> <p>Title 63 are those individuals licensed to practice a healing art (e.g., physician, optometrist, dentist,</p>	<p>Appears to cover assisted living, but not all employees.</p> <p>Scope appears limited illness, injury, or death related to the contraction of, or suspected contraction of, COVID-19.</p>

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			<p>otherwise be required in the absence of the COVID-19 pandemic.”</p> <p>Does not apply to gross negligence or willful misconduct.”</p> <p>EO remains in effect through July 31, 2020, unless extended.</p>	<p>chiropractor, ARNP).</p> <p>Title 33 is related to mental health facilities, substance abuse facilities, developmental disability facilities, and other personal support facilities.</p>	
Texas					
Utah	<p>S.B. 3002 (58-13-2.7 / 58-85-106)</p>	<p>April 22, 2020</p>	<p>The “Emergency Health Care Access and Immunity” bill was signed by Governor Herbert which provides limited immunity for certain actions during a declared major public health emergency.</p> <p>The Act provides that “[a] health care provider is immune from civil liability for any harm resulting from any act or omission in the course of providing health care during a declared major public health emergency if: (i)(A) the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared major public health emergency; or (B) the act of omission was the direct result of providing health care to a patient for the illness or condition that resulted in the declared major public health emergency; and (ii) the acts or omissions of the health care provider were not: (A) grossly negligent; or (B) intentional or malicious misconduct.” The Act also provides that “it is not a breach of the applicable standard of care for a health care provided to provide health care that is not within the health care provider’s education, training, or experience if: (i) the health care is within the applicable scope of practice for the type of license issued to the health care provider; (ii) (A) the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared major public health emergency; or (B) there is an urgent shortage of</p>	<p>Section 78B-3-403(10) defines “health care” as “any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient’s medical care, treatment, or confinement.”</p> <p>Section 78B-3-403 (12) defines “health care provider” to include “any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, PA, RN, LPN, PT, PTA, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician and surgeon, audiologist, speech -language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of</p>	<p>It appears that assisted living facilities are included – within the definition of “health care facility” and that term is used within “health care provider.”</p> <p>Scope may be interpreted to apply solely to COVID-19 patients.</p>

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			<p>health care providers as a direct result of the declared major public health emergency; and (iii) providing the health care is not: (A) grossly negligent; or (B) intentional or malicious misconduct.”</p> <p>Limited Immunity is also provided for the use of investigational drugs and devices during a major public health emergency.</p> <p>“Health care” and “Health care provider” means the same as the terms are defined in Section 78B-3-403.</p>	<p>any of the above acting in the course and scope of their employment.”</p> <p>(11) of this Section defines “health care facility” as “general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.”</p>	
Vermont	ADDENDUM 9 TO EXECUTIVE ORDER 01-20	April 10, 2020	<p>Governor Scott provided an Addendum to the EO 01-20 and in Provision 6 adopts “the following rule for the purpose of interpreting the scope of 20 V.S.A. § 20 relating to legal immunity for Health Care Facilities, Health Care Providers, and Health Care Volunteers, as defined herein, who are providing COVID-19 relating emergency management services or response activities. The intent of this rule is to clarify that under protections afforded by 20 V.S.A. § 20, Health Care Facilities, Health Care Providers, and Health Care Volunteers would be immune from civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, except in the case of willful misconduct or gross negligence.”</p> <p>“Emergency management” means “the preparation for and implementation of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, plan for, mitigate, and support response and recovery efforts from all hazards. Emergency management includes the equipping, exercising, and training designed to ensure that this state and its</p>	<p>“Health Care Facilities” means:</p> <ul style="list-style-type: none"> -State licensed nursing homes (as defined in 33 V.S.A. § 7102(7)) -Middlesex Therapeutic Community Residence -State licensed assisted living residences (as defined in 33 V.S.A. §7102(1)) -Level III residential care homes (33 V.S.A. 710(10)(A)) -Intermediate care facilities for individuals with intellectual disability -State therapeutic community residences (33 VSA 7102(11)) -Level IV residential care homes (33 VSA 7102(10)(B)) -all hospitals (defined in 18 VSA 1902) -all alternate or temporary hospital sites and other isolation, quarantine or housing sites designated by the Comm. of PSD/VEM for the treatment of, or alternate shelter for those who have been exposed to or infected with COVID-19. 	<p>Includes ALRs as a facility</p> <p>Scope appears limited to COVID-19 response activities or services.</p>

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			<p>communities are prepared to deal with all-hazards.”</p> <p>The EO lists what an “emergency management service or response activity, includes, but may not be limited to” which includes postponement of elective surgeries, “redeployment or cross training of staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 outbreak,” “planning, or enacting, crisis standard-of-care measures, including, but not limited to, modifying numbers of beds, preserving PPE, and triaging access to services or equipment as necessary to respond to the COVID-19 outbreak; and reduced recordkeeping to respond to the outbreak.</p> <p>Addendum 9 extended to June 15, 2020 through Addendum 14. Then, extended to July 15, 2020 pursuant to Amended and Restated EO No. 01-20.</p>	<p>“Health Care Providers” means: -all health care providers as defined by 18 VSA 9432(9), including volunteers, who are providing health care services to the COVID-19 outbreak and are authorized to do so.”</p>	
Virginia EO	<p>Executive Order No. Fifty-One (2020)</p> <p>Executive Order No. Sixty (2020)</p> <p>EO Amended Number 51 (2020)</p>	<p>March 12, 2020</p> <p>April 28, 2020</p> <p>May 26, 2020</p>	<p>Governor Northam’s EO does not speak to immunity, but declared a state of Emergency putting into effect the Emergency Services and Disaster law. (see below legislation).</p> <p>Remains in effect until June 10, 2020 unless sooner amended or rescinded.</p> <p>Executive Order Number 57 provides that “a health care facility includes assisted living facilities, congregate care settings, and any alternate care facility established in response to the COVID-19 emergency.” This is for purposes of the EO which requires health care facilities to submit to the applicable licensing board each out-of-state health care practitioner’s name, license, etc.</p> <p><i>Executive Order No. 60</i> provides clarification of certain immunity from liability for healthcare</p>	<p>EO No. 57 applies to “health care provider”</p>	

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			<p>providers. Specifically, it connects to the Code of Virginia Sections 8.01-225.01 and 8.01-225.02 (see next row) to order that healthcare workers, operating in response to the COVID-19 emergency, are immune from civil liability for any injury or wrongful death of any person arising from the delivery or withholding of health care. Immunity does not extend to gross negligence or willful misconduct. It clarifies the definition of the following phrases:</p> <p>*“<i>responds to a disaster</i>” has a list of what it “includes but is not limited to” such as the “temporary withholding of the provision of procedures.”</p> <p>*“<i>emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency</i>” “shall be deemed to include but is not limited to: (i) insufficient availability of PPE, ventilators, or other drugs, blood products, supplies or equipment; (ii) insufficient availability of train staff; (iii) having licensed healthcare professionals” deliver care outside their scope of license; “(iv) implementation or execution of triage protocols or scarce resource allocation policies necessitated by healthcare provider declaration of crisis standards of care; and (v) using supplies or equipment in innovative ways . . .”</p> <p>EO Amended Number 51 (2020) extends the declaration of emergency through this EO until the EO is amended or rescinded by further EO.</p>		
Virginia Legislation	Code of Virginia 8.01-225.02		<p><u>Pre-Existing Legislation – Emergency Statute</u></p> <p>Code of Virginia section 44-146.23 afford immunity from civil liability, but it is mainly to</p>	“For purposes of this section: ‘Health care provider’ has the same definition as provided in §8.01-581.1.	Looks like nursing homes are included, but not AL. Code of Virginia 54.1-3100 covers both assisted living and nursing homes, but has a specific definition for both

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			<p>volunteers. Does not apply to gross negligence of willful misconduct. Section 44-146-23(E) states that “immunity” provided by the provisions of this paragraph, shall be in addition to, not in lieu of, any immunities provided by section 8.01-225.”</p> <p>Code of Virginia section 8.01-225.02 provides “In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue.”</p>	<p>Code of Virginia 8.01-581.1. Definitions "Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or a person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact, nurse practitioner, optometrist, podiatrist, physician assistant, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed marriage and family therapist, licensed dental hygienist, health maintenance organization, or emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in §54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily</p>	<p>entities. Therefore, since the Code definition of “Health care provider” refers to nursing home and not also assisted living, I don’t think AL is covered.</p>
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				renders health care services; or (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.	
Washington					
West Virginia					
Wisconsin Legislation	Assembly Bill 1038	April 15, 2020	<p>Governor Evers signed Assembly Bill 1038 into law. It provides for “immunity from civil liability for health care professionals and providers and employees, agents, or contractors of those professionals or providers for death, injury, or damages caused by actions or omissions taken in providing services to address or in response to a 2019 novel coronavirus outbreak during an emergency or disaster declared relating to the 2019 novel coronavirus pandemic.” Cannot be reckless, wanton conduct, or intentional misconduct and “must occur during a good faith response to the emergency or be substantially consistent with either a direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster or any published guidance of DHS or the federal DHHS relied upon in good faith.”</p> <p>Section 98. 895.4801: “Immunity for health care providers during COVID-19 emergency” (2) Immunity. “Subject to sub. (3), any health care professional, health care provider, or employee, agent, or contractor of a health care professional or health care provider is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions</p>	<p>Section 98. 895.4801: “Immunity for health care providers during COVID-19 emergency” (a) “Health care professional” means an individual licensed, registered, or certified by the medical examining board under subch. II of ch. 448 or the board of nursing under ch. 411 (b) “Health care provider” has the meaning given in s. 146.38(1)(b) and includes an adult family home, as defined in s. 50.01(1).</p> <p>s. 146.38 (1)(b)(2) includes “residential care apartment complex” and directs you to s. 146.81 (1)(n) which includes community-based residential facility.</p>	<p>Identifies Community-Based Residential Facility and Residential Care Apartment Complex in the legislation. Does not appear to include Adult Day Care and Adult Family Home.</p> <p>Professional doesn’t appear to cover unlicensed.</p> <p>Scope – “under circumstances that satisfy all of the following conditions” including (3) “<i>occur during the person’s good faith response to the emergency</i> or are substantially consistent with” (a) or (b). Would have to fall under the first part and it’s vague what that means.</p>

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			<p>taken in providing services to address or in response to a 2019 novel coronavirus outbreak under circumstances that satisfy all of the following:</p> <p>(a) The action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared . . ., relating to the 2019 novel coronavirus pandemic and for the 60 days following the date that the state of emergency terminates.</p> <p>(b) The actions of omissions occur during the person’s good faith response to the emergency described under par. (a) or are substantially consistent with any of the following:</p> <ol style="list-style-type: none"> 1. Any direction, guidance recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared as described under par. (a). 2. Any guidance published by the Dep’t of health services, the federal dep’t of health and human services, or any divisions or agencies of the federal dep’t of health and human services relied upon in good faith. <p>(c) The actions or omissions do not involve reckless or wanton conduct or intentional misconduct.”</p> <p>This does not apply if s. 257.03, 257.04, 323.41, or 323.44 applies.</p>		
Wyoming	Senate Bill 1002	May 20, 2020	<p>Governor Gordon signed into law Senate Bill 1002 which revises W.S. 35-4-114 providing immunity to “any health care provider or other person, including a business entity, who in good faith follows the instructions of a state, city, town or county health officer or who acts in good faith in responding to the public health emergency [from] any liability arising from complying with</p>	<p>“Health care provider” is not defined in the bill or in W.S. §35-4-115. It does, however, reference “or other person, including a business entity.”</p> <p>Scope is limited to <i>following</i> health officer instructions or acting in good <i>faith to respond to</i> the public health</p>	

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			<p>those instructions or acting in good faith.”</p> <p>Immunity does not apply to gross negligence or willful or wanton misconduct.</p> <p>Effective immediately upon enactment of the bill into law.</p>	<p>emergency.</p>	
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