

On September 14, 2020, Governor Mike DeWine signed a bill into law granting immunity to medical providers, individuals, schools, and businesses from lawsuits arising due to COVID-19.

I. Introduction

The bill is generally divided into Sections 1 and Sections 2, addressing medical liability and non-medical liability, respectively. Coverage for both groups extends from the date of the Governor’s Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19, through September 30, 2021.

Section 3 outlines the factual findings working as the basis for the act. Notably, the General Assembly observed that lawsuits related to COVID-19 are increasing nationally, that recommendations and best practices are constantly evolving, that businesses have not historically been required to keep the public safe from air-borne illnesses, and no previous statutes or case law were written with a COVID-19 health emergency in mind.

II. Section 1: Medical Liability

A. Persons Covered

Section 1 identifies by name 46 discrete types of care providers, including athletic trainers, psychologists, health boards, dentists, EMTs, health centers, hospices, occupational therapists, pharmacists, and physician assistants.

A “health care provider” is also identified by the Bill and is broadly defined as: “a healthcare professional, health care worker, direct support professional, behavioral health provider, or emergency medical technician or a home health agency, hospice care program, home and community-based services provider, or facility, including any agent board member, committee member, employee, employer, officer, or volunteer of the agency . . .”.



B. Scope of Coverage

The above persons enjoy a qualified civil immunity from liability in a tort action, which the act defines as “a civil action for damages for injury, death, or loss to person or property and includes claims arising under resident or patient bills of rights and contractual claims arising out of statutory or regulatory requirements applicable to health care providers.” Tort actions explicitly include actions on a medical claim. Additionally, the coverage extends to professional disciplinary actions.

i. Conduct

Conduct protected by the act includes: (1) an act or omission of provision of health care services, such as withholding or withdrawing service; (2) any decision relating to the provision of those services; and (3) compliance with an executive or director’s order issued during and in response to the disaster or emergency.

Similarly, a health care provider is not subject to professional disciplinary action due to a failure to diagnose, treat, or test a patient for an illness (including failing to perform elective surgeries) based on an order issued in relation to a public health emergency.

ii. Exceptions

One exception to the immunity is the state of mind with which the above conduct occurs. Health care providers are shielded from civil liability unless they act with reckless disregard, intentional misconduct, or willful or wanton misconduct. In professional disciplinary actions, health care providers are immune in all cases but gross negligence.

Immunity is also not available in tort or disciplinary actions where a health care provider was acting outside of his or her skills, education, and training, unless the provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.

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III. Section 2: Non-Medical Liability

Section 2 grants immunity to “any person.” “Person” includes schools, for-profit or nonprofit entities, governmental entities, religious entities, and state institutions of higher education.

No civil action for damages for injury, death, or loss to person or property can be brought against any person if the action is based in whole or in part on the transmission or contraction of COVID-19 and its mutations. Only reckless conduct, intentional misconduct, or willful or wanton misconduct will destroy this immunity.

The act makes specific that government orders, recommendations, and guidelines do not create a novel duty of care upon any person or business entity enumerated above. In that vein, the act creates a presumption that evidence of such orders is inadmissible to establish a duty of care existed.

IV. In Practice

Notably, there is a major difference in language used to describe immunity for medical providers versus non-medical persons; while medical providers “are not liable” for their conduct, “no civil action...shall be brought” against non-medical persons. The distinction here may be procedural; while medical providers may win on a motion for summary judgment because their immunity *shields them from liability*, a non-medical person may win on a 12(B)(6) motion to dismiss for failure to state a claim because they are *immune from suit*.

Additionally, the groups are not mutually exclusive. A provider who is shielded from immunity under Section 1 of the act could assert immunity under Section 2, should the facts suggest both sections are applicable. Should immunity not apply in either circumstance, a person or provider is still shielded from class-actions against conduct outlined in Section 1 and Section 2, respectively.

If you have any questions about HB 606 or other general liability matters, reach out to a Poling professional for individualized support.