

Guidance Concerning Liability for Healthcare Providers and Facilities

April 3, 2020

Background

Facilities and individuals providing healthcare services in response to a declared disaster emergency, such as the one declared because of COVID-19, may not be held civilly liable for care provided in response to that emergency event unless the care resulted from gross negligence or willful misconduct. Indiana Code 34-30-13.5 sets forth the details of this immunity.

“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 goods furnished for the purpose of preventing, alleviating, curing, or healing human illness, physical disability, or injury.”

Additionally, the federal government provided for immunity for volunteer healthcare providers in the CARES Act.

Healthcare Providers including Volunteers

Indiana Law

The liability protection for healthcare providers under Indiana Code 34-30-13.5 does not depend on employment status, meaning whether a provider is a volunteer or an employee. To be immune from civil liability, a provider must:

1. Have a license to provide healthcare services under Indiana law or the law of another state.
2. Provides the healthcare service within the provider’s scope of practice during the COVID-19 emergency declaration.

Providers that did not hold an active license prior to this outbreak, but are providing healthcare services in accordance with the requirements of Executive Order 20-13, including registration with the Indiana Professional Licensing Agency, are licensed for purposes of this liability protection.

Federal Law

The CARES Act specifically provides immunity to volunteer healthcare professionals providing care during the federally declared health emergency declared because of COVID-19. To meet the requirements of this immunity, a healthcare professional must provide the care and not receive compensation for care provided related to COVID-19, and the care provided must be within the scope of practice.

Healthcare Facilities

The 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 Indiana state law or the law of another state and the provision of care is in response to and during the COVID-19 emergency declaration. Additionally, this section references “locations” that have immunity, so it would extend to non-facility locations that may be set-up in response to the COVID-19 emergency.

Note – *this document will be updated as needed.*