

Last Updated May 19, 2020

## Immunity for Performance of Elective Surgeries or Procedures

On May 13, [Executive Order 2020-37](#) was issued, which revises the immunity granted under a previous executive order as it relates to the performance of elective surgeries or procedures.

### To whom does the order apply?

- Health care professionals:
  - Physicians and all licensed or certified health care or emergency medical services workers who:
    - Are providing health care services at a hospital or health care facility in response to the COVID-19 pandemic and are authorized to do so; OR
    - Are working under the direction of the Illinois Emergency Management Agency (IEMA) or Illinois Department of Public Health (IDPH) in response to the disaster proclamation
- Health care volunteers:
  - All volunteers or medical or nursing students who do not have licensure who:
    - Are providing services, assistance, or support at a hospital or health care facility in response to the COVID-19 pandemic and are authorized to do so; OR
    - Are working under the direction of the IEMA or IDPH in response to the disaster proclamation
- Hospitals:
  - Facilities licensed or approved by the:
    - Hospital Licensing Act, 210 ILCS 85
    - University of Illinois Hospital Act, 110 ILCS 330
- Health care facilities:
  - Ambulatory surgical treatment centers
  - Skilled and intermediate long-term care facilities licensed under the Nursing Home Care Act or ID/DD Community Care Act or the MC/DD Act
  - Facilities licensed under the Specialized Mental Health Rehabilitation Act of 2013
  - Hospitals, nursing homes, ambulatory surgical treatment centers, or kidney disease treatment centers maintained by the State or any department or agency
  - Facilities covered by the University of Illinois Hospital Act, the Alternative Health Care Delivery Act, the Emergency Medical Services (EMS) Act, and the Department of Veterans' Affairs Act

- State-operated developmental centers and licensed state-operated Mental Health Centers
- Licensed community-integrated living arrangements
- Licensed community mental health centers
- Federally qualified health centers
- Alternate Care Facilities licensed by IDPH
- Supportive living facilities certified by the Illinois Department of Healthcare and Family Services pursuant to the Public Aid Code
- Assisted living establishments and shared housing establishments licensed by the IDPH pursuant to the Assisted Living and Shared Housing Act

### **What does the order provide?**

- Directs health care facilities, health care professionals, and health care volunteers to “render assistance”.
- For hospitals and health care facilities, “rendering assistance” means increasing the number of beds, preserving and properly employing personal protective equipment, conducting widespread testing, and taking necessary steps to prepare to treat patients with COVID-19 and to prevent further transmission of COVID-19.
  - For hospitals conducting elective surgeries or procedures, “rendering assistance” must include compliance with IDPH’s current guidance on elective surgeries and procedures.
  - Rendering assistance by hospitals must also include accepting a transfer of a COVID-19 patient from another hospital, including hospital inpatients, and from state-operated entities that do not have the capacity and capability necessary to provide treatment for a COVID-19 patient.
  - For health care facilities, “rendering assistance” must also include, consistent with current 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.
- For health care professionals, “rendering assistance” means providing health care services at a hospital or health care facility in response to the COVID-19 pandemic, or working under the direction of IEMA or IDPH.
- For health care volunteers, “rendering assistance” means providing services, assistance, or support at a hospital or health care facility in response to the COVID-19 pandemic or working under the direction of IEMA or IDPH.

### What immunity protections does it include?

- Hospitals that conduct elective surgeries or procedures beginning on or after May 11, or health care professionals who are providing services in such a hospital, shall be 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 hospital or health care professional, which injury or death occurred at a time when a hospital or health care professional was rendering assistance to the state in response to the COVID-19 pandemic by providing health care services consistent with current guidance issued by IDPH, except where the injury or death was caused by gross negligence or willful misconduct.
- Health care facilities or health care professionals providing services in a health care facility shall be 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 an act or omission by the facility or professional, which injury occurred at a time when a facility or professional was rendering assistance to the State in response to the COVID-19 pandemic by providing health care services consistent with current guidance issued by IDPH, except where the injury or death was caused by gross negligence or willful misconduct.
- Health care volunteers are immune from civil liability for any injury or death caused by their act or omission which occurred at a time when the volunteer was rendering assistance by providing services, assistance, or support consistent with current guidance issued by IDPH, except where the injury was caused by willful misconduct.
- *The immunity granted under this executive order only applies where such surgeries or procedures are performed in a hospital or licensed health care facility.*