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The Doctors Company
GOVERNMENT RELATIONS

Summer / Fall 2020

Advocacy Update

EXECUTIVE SUMMARY

Legislatures across the nation redirected their 2020 legislative agendas to address the challenges caused by the COVID-19 pandemic. Initiatives ranged from providing waivers for renewing medical licenses to limited medical liability protections to emerging budget deficits.

The Doctors Company's advocacy work was heavily focused on COVID-19 related government actions this spring and summer, with an emphasis on securing medical liability protections for our members.

As detailed below, more than half of the states have implemented public policy initiatives that recognize the pandemic's unprecedented conditions for the practice of medicine. At the federal level, The Doctors Company advocated for and Congress passed the CARES Act providing limited liability protection for healthcare professionals returning to volunteer in the crisis. We continue to advocate for medical liability protections before state governments and Congress as it considers additional legislation to extend these protections to all healthcare providers. Thousands of our members have engaged in our federal and state grassroots campaigns to help advance these important policies.

While all levels of state and federal government put a remarkable amount of energy toward the pandemic, the courts continued their work in a steady, although periodically slowed, manner. The Doctors Company actively supported "friend of the court" briefs in jurisdictions across the country defending liability protections for healthcare providers and arguing against laws that unfairly prevent juries from hearing evidence. In one of those cases, the Oregon Supreme Court struck a significant blow to Oregon's limits on non-economic damages in personal injury cases. Prior to the court's decision, The Doctors Company and a wide coalition of healthcare advocates had successfully defended the caps in the State Legislature, securing bipartisan support in the Senate for these reforms that are critical to protecting access to healthcare in Oregon.

Several state legislatures will be called into special sessions during the remainder of the year to advance additional pandemic-related public policy needs. Much of this work will be colored by the upcoming general election as policymakers respond to their constituents' demands. State and federal agencies will continue to implement programs that influence the practice of medicine, and the courts will continue to hear challenges to medical liability protections. The Doctors Company remains engaged with our partners across the nation, advocating on behalf of our members.

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Advocacy Spotlight:
Public Policy and The Rapid Expansion of Telehealth

Public policy developments are notoriously slow to adapt to technology advances. Even after legislators and interested parties reach consensus on legislation, implementing and regulating newly passed laws is commonly delegated to government agencies who embark on what is often the tedious task of rulemaking and rolling out programs. Telehealth-related public policy is no exception to this rule.

Using advanced telecommunication and information technologies for health care entered the mainstream over the last decade; and while telehealth may seem like a novelty to some patients, physicians know it is not all that new. In 1878, correspondence published in *The Lancet* discussed the use of telephones to improve medical diagnosis.[1] In the nearly 150 years since then, telehealth advancements have seen the slow creep toward what the public experiences today via smart phones, high definition screens, and fitness devices.

The public policy issues wrapped around the use of modern technology in delivering health care include privacy concerns, liability, licensing, cybersecurity, payment parity, and reliable infrastructure. These issues coupled with legislators' propensity to move cautiously on the important topic of health care contributed to the slow advancement of telehealth legislation and regulations.

That all changed in March 2020 when the COVID-19 pandemic forced the rapid deployment of telehealth.

This spring, the Federal Government, through the Centers for Disease Control and Prevention (CDC), issued guidance to healthcare providers using telehealth services.

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Advocacy Spotlight: Public Policy and The Rapid Expansion of Telehealth (cont.)

The guidance, "Using Telehealth to Expand Access to Essential Health Services during the COVID-19 Pandemic," recognizes the role telehealth is playing to expand access to health care and improve patient outcomes. In it, the CDC states, "Before the COVID-19 pandemic, trends show some increased interest in use of telehealth services by both healthcare providers and patients. However, recent policy changes during the COVID-19 pandemic have reduced barriers to telehealth access and have promoted the use of telehealth to deliver acute, chronic, primary and specialty care. Many professional medical societies endorse telehealth services and provide guidance for medical practice in this evolving landscape."

The Doctors Company monitored 65 pieces of legislation introduced across the nation and reported out on 26 different state and federal orders and advisories – each one of those government actions was directed toward removing the barriers to using telehealth technologies when providing health care during the pandemic. For example, New York provided a broad expansion of the ability of all Medicaid providers to use a variety of methods to deliver services remotely; while California adopted similar provisions that included relaxing state privacy laws for providers and temporarily allowing out-of-state licensed providers to provide telehealth care.

Indications are that the advantages of using telehealth – from keeping patients safe from possible exposure to viruses, improving access to care, and reducing costs – have positioned it to become a regular method for providing and receiving health care.

Major public policy changes are still necessary to ensure telehealth has a permanent role in delivering patient care. When the Federal government issued its public health emergency relaxing restrictions on telehealth for Medicare, most private healthcare insurers followed suit. Yet, without permanent changes to telehealth public policy, private health insurers may scale back support of telehealth by resuming out-of-pocket payments and requiring prior authorizations before telehealth can be used to provide care.

As states are considering what needs to be done to make telehealth a permanent option, Congress is looking at concrete steps to make that happen. Legislation filed by Congressman Thompson (CA-05) and the House Telehealth Caucus aim to protect access to telehealth after the COVID-19 emergency period ends. This coincides with the release of a draft report from the U.S. House of Representatives' Ways and Means Committee to preserve access to care through telehealth. Public policy changes under consideration include:

- Remove geographic and originating site restrictions so that Medicare beneficiaries will have the permanent option to use telehealth.
- Permanently lift the restrictions on Federally Qualified Health Centers and Rural Health Clinics to improve access for rural and underserved areas.
- Permanently allow physical therapists, speech pathologists, and occupational therapists to provide care by telehealth, and allow the Secretary of Health and Human Services to waive limitations on other types of practitioners.
- Permanently allow telehealth services through audio-only telephone when audio-visual is not an option if the patient and provider have an established relationship.

Advocacy Spotlight: Public Policy and The Rapid Expansion of Telehealth (cont.)

- Permanently allow Health Savings Account plans to cover telehealth services before meeting the plan's deductible.
- Permanently allow remote authorization of dialysis care to integrate telehealth into home health settings.

These and other ideas support the notion that the momentum behind telehealth continues. And the post-pandemic expansion of telehealth has support of both parties and the trendline indicates continued interest in this method of care.

As a result of the pandemic, telehealth is becoming an expected part of today's healthcare landscape. The rapid changes in public policy are being addressed by The Doctors Company, whose members have access to its COVID-19 Telehealth Resource Center, as providers and their technology partners have demonstrated that the COVID-19 accelerated adoption of telehealth provides quality health care and has permanently transformed health care.

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[1] The Lancet, 1878

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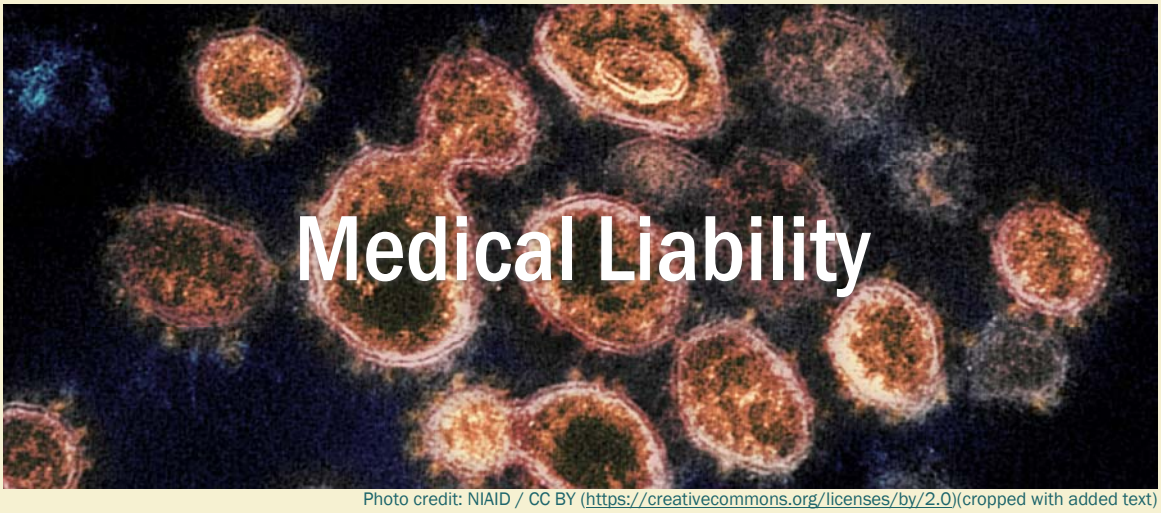
Advocacy Spotlight:
COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers



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The public health crisis created by the COVID-19 pandemic has put healthcare providers in the crosshairs. Providers have been faced with providing care for patients in unprecedented circumstances and under rapidly changing state and federal laws and guidelines. While many of these changes in law were critical to fighting the pandemic, they have also subjected healthcare providers to increased exposure to liability. The new rules impact both the provision of care to patients with COVID-19 and those whose care was put on hold or altered. Many states prohibited non-emergency surgeries and in-person routine visits to healthcare providers. Many patients have been fearful of seeking needed care in the midst of the pandemic. Unfortunately, these rules and circumstances also have the unintended, but very real consequences of creating liability for both acts and omissions they have created, such as missed or delayed diagnosis.

As the crisis deepened, policymakers across the United States enacted emergency rules by executive order, and less often, legislation. For example, these emergency rules dramatically expanded the role of telemedicine in the provision of care and allowed healthcare providers to practice at the top of their professional licensing, and in some cases beyond. Medical students could practice medicine, licensing and prescription authority requirements were expanded or waived, and physicians and nurses were pressed to practice outside their specialty. Facilities were required or requested to provide unanticipated accommodations and services outside of any emergency plans they had in place prior to the onset of COVID-19. What many lawmakers initially failed to do was to recognize that in the wholly justified rush to provide desperately needed care to their citizens, they were failing to protect healthcare providers from claims of ordinary negligence while asking them to take on expanded and changed roles in extraordinary circumstances.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

Recognizing the urgent problem faced by the healthcare community, advocates for the medical profession, including representatives of healthcare and The Doctors Company, have and will continue to work diligently to encourage enactment of state and federal protections for our members. To date, we have achieved varying degrees of success in more than 30 jurisdictions. Unfortunately, these protections are already under attack and lawmakers are now considering repealing or prematurely ending previously granted protections at the insistence of organized personal injury lawyers. The Doctors Company continues our efforts to see new protections enacted and protect what has been achieved. The chart below outlines the protections provided.

COVID-19 Healthcare Provider Medical Liability Protection Actions

Disclaimer: While the information included in this chart is believed true and correct at the date of publication, please verify the information before acting on it as legislative action and executive orders after the time of publication may impact the accuracy of the information.

State	Summary	Status
 Alabama	On March 13, 2020, Alabama Governor Kay Ivey declared a state of emergency regarding the COVID-19 crisis that stated, among other things, that "healthcare facilities that have invoked their emergency operation plans in response to this public health emergency may implement the 'alternative standards of care' plans provided therein." In addition, by another executive order issued May 8, 2020, the Governor instituted civil liability protection for businesses, healthcare providers and other covered entities 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 it is shown by clear and convincing evidence that the injury was caused by the defendant's wanton, reckless, willful or intentional conduct. If liability is established, and the acts or omissions do not result in serious physical injury (defined in the order), liability shall be limited to actual economic compensatory damages and no liability shall be awarded for non-economic or punitive damages except in the case of wrongful death where punitive damages may be awarded.	Effective March 13, 2020 and continues through the duration of the declared public health state of emergency.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Alabama (cont.)	For any cause of action that occurred before the date of the additional proclamation (May 8, 2020) and for which a court holds the above rules do not apply, the applicable standard of care shall be proving by clear and convincing evidence that the defendant did not reasonably comply with the then applicable public health guidance. Further, notwithstanding any other provision of law, a defendant 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 section does not prohibit an award of punitive damages for wrongful death claims, but no other damages shall be allowed for such claims.	
 Alaska	Alaska Senate Bill 241 provides that during the COVID-19 state of emergency, "a public health agent or healthcare provider who takes action based on a standing order issued by the chief medical officer is not liable for civil damages resulting from an act or omission in implementing the standing order, except as a result of gross negligence, recklessness, or intentional misconduct."	Effective March 11, 2020 and through November 15, 2020.
 Arizona	By executive order, Arizona Governor Doug Ducey instituted civil liability protection for Arizona licensed healthcare professionals and volunteer healthcare professionals registered with the state. The liability protection order carries a presumption that the healthcare provider has acted in good faith. The liability protection also applies to triage decisions made while providing medical services based on good faith reliance of mandatory or voluntary state-approved protocols under the declared COVID-19 state of emergency. Licensed healthcare facilities and any entity operating a modular field treatment facility or other site, whether licensed or not, that is designated by the Arizona Department of Health Services for temporary use in support of the State's COVID-19 response is immune from civil liability for any acts or omissions undertaken in good faith by one or more of its agents, officers,	Effective March 11, 2020 and continues through the duration of the order.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Arizona (cont.)	employees, representatives, or volunteers in support of the public health emergency. No protection is provided to providers or facilities for gross negligence or reckless or willful misconduct.	
 Arkansas	By executive order, Arkansas Governor Asa Hutchinson suspended Arkansas' statutory law to the extent necessary to provide civil liability protection to physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses. The liability protections may apply to the listed professionals who are acting outside the scope of his or her practice in some limited circumstances but will not apply to anyone acting in gross negligence, willful misconduct, or bad faith.	Effect April 13, 2020 and continues through the duration of the order.
 California	Existing California Government Code § 8659 offers liability protections to healthcare providers who render aid during a declared state of emergency, at the express or implied request of any responsible state or local official or agency. It is not clear that this immunity will apply to providers who are treating COVID-19 patients as part of their normal practice activities. Under the March 4, 2020 proclamation of a state of emergency in California, Governor Gavin Newsom invoked the "Emergency Management Assistance Compact," which invited healthcare providers from participating states to enter California and render assistance with the COVID-19 crisis. Under this proclamation, any providers who entered California to provide medical care for the COVID-19 crisis would be treated as state actors and entitled to the protections of CA Government Code § 8659.	Effective March 4, 2020 through the duration of the declared state of emergency.
 Connecticut	Connecticut Governor Ned Lamont issued an executive order stating that all healthcare professionals or healthcare facilities shall have civil liability protection for any injury or death alleged to have been sustained from the individual's or healthcare facility's good faith acts or omissions while providing healthcare services in support of the State's COVID-19 response, including but not limited to acts or omissions undertaken because of a	Effective March 10, 2020 and continues through the duration of the order.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Connecticut (cont.)	lack of resources, attributable to the COVID-19 pandemic, that renders the healthcare professional or healthcare 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, provided that nothing in the order shall remove or limit any liability protection conferred by any other provision of the Connecticut General Statutes or other law. This liability protection 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 acts. The liability protection conferred by this order applies to acts or omissions subject to this order occurring at any time during the public health and civil preparedness emergency declared on March 10, 2020, including any period of extension or renewal, including acts or omissions occurring prior to the issuance of this order attributable to the COVID-19 response effort.	
Delaware	Delaware Governor John Carney issued an executive order recruiting out-of-state and retired providers and limited their liability. The order categorizes these providers as public employees thus providing them limited liability if they are not found to be grossly negligent. A joint order issued by the Delaware Department of Health and Social Services and the Delaware Emergency Management Agency further clarifies the Governor's order.	Effective 5 p.m. March 23, 2020 and remains in effect until further notice.
Federal	Congress passed and the President signed legislation as part of the "CARES" Act that provides limited "Good Samaritan" liability protections for volunteer healthcare professionals providing uncompensated services to assist with the COVID-19 crisis.	Effective January 27, 2020 and continues through the duration of the public health emergency.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Federal (cont.)	On February 4, 2020, the U.S. Department of Health and Human Services (HHS) issued a federal order which relates to the Public Readiness and Emergency Preparedness Act (PREP). The order added new legal authorities to the Public Health Service (PHS) Act to provide liability protection related to the manufacture, testing, development, distribution, administration and use of medical countermeasures against chemical, biological, radiological and nuclear agents of terrorism, epidemics, and pandemics. The HHS has applied the liability protections provided by the PREP Act to the COVID-19 virus pandemic as of February 4, 2020. The PREP Act provides protection from liability (except for willful misconduct) for claims of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to diseases, threats and conditions determined by the Secretary to constitute a present or credible risk of a future public health emergency to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of such countermeasures. A PREP Act declaration is specifically for the purpose of providing protection from liability, and is different from, and not dependent on, other emergency declarations.	Effective February 4, 2020 and expires October 1, 2024 or the final day the emergency declaration is in effect, whichever occurs first.
 Georgia	On April 14, 2020, Governor Brian Kemp issued an executive order designating healthcare providers in Georgia as “emergency management workers,” which brought providers under the liability protections found in existing Georgia Code Section O.C.G.A. 38-3-35 (2010). This section provides liability protections for employees, staff and contractors of healthcare institutions and facilities as actors of the state for declared states of emergency. These protections were expanded and codified via legislation. On August 5, 2020, Governor Kemp signed legislation passed by the Georgia Legislature codifying his April 14, 2020 executive order declaring that during the COVID-19 state of emergency employees, staff and contractors of healthcare institutions and medical facilities as well as services provided by healthcare institutions and	Effective March 14, 2020 and expires July 14, 2021.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Georgia (cont.)	medical facilities shall be considered emergency management workers and activities. As emergency management workers and activities, these professionals and facilities are considered state actors and have state actor civil liability immunities under Georgia law.	
 Hawaii	By executive order issued by Hawaii Governor David Ige, during the COVID-19 emergency, healthcare professionals, facilities, and volunteers who in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the healthcare professional, facility or volunteer when the healthcare professional was engaged in the course of rendering assistance to the state by providing healthcare services in response to the COVID-19 outbreak, unless it is established that such death or injury to persons or property damage was caused by willful misconduct, gross negligence, or recklessness of the healthcare professional.	Effective March 4, 2020 and continues through the duration of the order.
 Illinois	Illinois Governor J. B. Pritzker extended the State's Good Samaritan liability protection by Executive Order No. 17 to include compensated care related to COVID-19 by healthcare providers and facilities. These providers shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission during which injury or death occurred at a time when the healthcare provider or facility was engaged in the course of rendering assistance to the State by providing healthcare services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by gross negligence or willful misconduct. The Governor also issued Executive Order No. 37 providing additional conditions to the healthcare provider immunities originally provided by Executive Order No. 17 (detailed above). However, under Executive Order No. 37, when rendering assistance healthcare	Effective March 9, 2020 (the date of the disaster declaration) and continues through the duration of the disaster proclamation. NOTE: Clarifications to the underlying order were issued on May 13, 2020 and continue through the duration of the disaster proclamation.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Illinois (cont.)	providers and facilities must include a variety of measures such as increasing beds, care when transferring patients, and providing care consistent with current guidance issued by the Illinois Department of Public Health.	
 Indiana	Since 2006, Indiana has provided for healthcare provider liability protection when providing services in response to a declared disaster. Governor Eric Holcomb, by Executive Order 20-02, declared a public health emergency and state disaster thereby activating the existing statute.	Effective March 6, 2020 and continues through the duration of the declared disaster.
 Iowa	Iowa Governor Kim Reynolds signed into law Senate Bill 2338. This legislation contains phantom damages reform and COVID-19 liability protections. The COVID-19 liability provisions are broad and cover healthcare providers, facilities, and devices, as well as general business immunities. The law provides that a healthcare provider shall not be liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the healthcare provider's acts or omissions while providing or arranging health care in support of the State's response to COVID-19. The law shall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct.	Effective January 1, 2020 and is not linked to the expiration of any executive order. The operative liability protection trigger is whether the care is provided to support the state's response to COVID-19.
 Kansas	Kansas enacted legislation codifying the liability protections found in Kansas Governor Laura Kelly's Executive Order 20-26. Under the statute, most healthcare providers will be immune from civil liability for damages or liability arising out of, or relating to, acts, omissions, or healthcare decisions occurring during any state of disaster emergency related to COVID-19. This liability protection will not apply to civil liability when it is established that the act, omission, or healthcare decision constituted gross negligence or willful, wanton, or reckless conduct. Also, this liability protection will not apply to healthcare services not related to COVID-19	Effective March 12, 2020 and applies to any cause of action occurring on or after that date and prior to the termination of the COVID-19 state of disaster emergency.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Kansas (cont.)	that have not been altered, delayed, or withheld because of the COVID-19 public health emergency. The law does not extend this liability protection to nursing homes but does give such facilities an affirmative defense to liability in a civil action.	
 Kentucky	The Kentucky Legislature passed and Governor Andy Beshear signed into law legislation providing a defense to civil liability for ordinary negligence for COVID-19 care related personal injury claims, specifically stating that a healthcare provider who in good faith renders care during the state of emergency shall have a defense to civil liability for the ordinary negligence for any personal injury resulting from the acts or omissions of care.	Effective March 6, 2020 and continues through the duration of the State's declared state of emergency.
 Louisiana	Louisiana Governor John Bel Edwards signed legislation that provides blanket immunities for exposure to COVID-19. With exceptions for gross negligence or wanton or reckless misconduct, HB 826 provides liability protection for actual or alleged exposure to COVID-19; limits employee claims to claims determined to be compensable under the State's workers' compensation laws; and provides liability protection for the design, manufacture, distribution or use of personal protective equipment so long as the defendant was in substantial compliance with local, state, or federal safety procedures. In addition to the above, Louisiana enacted legislation that provides immunities for individuals, state and local governments and political subdivisions for exposure of others to COVID-19 during business operations. With exceptions for gross negligence or wanton or reckless misconduct, SB 435 provides broad liability protection for actual or alleged exposure to COVID-19 so long as the defendant was in substantial compliance with local, state, or federal safety procedures. These immunities are retroactive to March 11, 2020.	Effective March 11, 2020 and continues through the duration of the State's declared public health emergency relating to COVID-19.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
 Maryland	Maryland's existing liability protection statutes apply under the current COVID-19 circumstances per Governor Larry Hogan's proclamation of a catastrophic health emergency. The statute states: "a healthcare provider is immune from civil or criminal liability if the healthcare provider acts in good faith and under a catastrophic health emergency proclamation." Governor Hogan's renewed proclamation issued on June 3, 2020 specifically states that "Healthcare providers who act in good faith under this catastrophic health emergency... have immunity provided by..." Maryland Code 14-3A-06. Additionally, in 2015, the Maryland Attorney General issued an opinion addressing the potential liability of hospitals for removing individuals from ventilators to provide the care to others. The opinion concluded that under the Act, the Governor would have the authority to develop criteria for the use of ventilators. Beginning on Page 12 of the opinion, there is a discussion of a hospital's civil and criminal liability protection under the Act, and the opinion indicated that "[t]he purpose of this immunity provision is to ensure that clinicians can comply with the governor's orders and act to save lives during a public health emergency without fear of liability," stating that "[e]vidence shows that some clinicians will not participate fully, or at all, if they fear liability for their actions that result in unintentional harm to patients or even from foreseen harms that result from following appropriately vetted clinical guidelines for [mass critical care]."	Effective March 5, 2020 and continues through the duration of the proclamation.
 Massachusetts	The Massachusetts Legislature passed, and Governor Charlie Baker signed legislation to provide COVID-19-related liability protections for healthcare providers and facilities. The law defines damages as: "injury or loss of property or personal injury or death, including economic or non-economic losses." Liability protection is not provided for in the instance of gross negligence, recklessness, intent to harm or discriminate or actions related to consumer protections brought by the Attorney General or false claims actions.	Effective March 10, 2020 and continues through the duration of the emergency declaration.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
 Michigan	Michigan Governor Gretchen Whitmer, through executive orders, relaxed the scope of practice laws to give healthcare providers and facilities the flexibility needed to deploy care to combat COVID-19. The temporary relief from certain restrictions and requirements governing the provision of medical services allows providers to provide COVID-19 care without criminal, civil, or administrative penalty, unless it is established that injury or death was caused by gross negligence.	There are various effective dates for executive order liability protection and statutory liability protection (established by MCL 30.411(4)). March 29, 2020 to March 31, 2020 for EO-based liability protection. April 1, 2020 to April 25, 2020 by EO-30 for both EO Liability protection and Statutory Liability protection. April 26, 2020 to April 30, 2020 by EO2020-61 for both EO Liability protection and Statutory Liability protection. April 30, 2020 to July 13, 2020 by EO-100 for both EO Liability protection and Statutory Liability protection. All immunities EXPIRED ON JULY 13, 2020 by rescission of EO-61 by EO-150.

Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
 Mississippi	By executive order, Mississippi Governor Tate Reeves provided healthcare professionals and facilities civil liability protections for any injury or death alleged to have been sustained because of the provider's or facilities' acts or omissions while providing healthcare 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 rendered the provider or facility unable to provide the level or manner of care that otherwise would have been required. These liability protections do not apply to acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct or would otherwise constitute a false claim under federal law.	Effective March 14, 2020 through one year beyond the end of the declared emergency. NOTE: Mississippi's enacted legislation provides the same protections as the executive order and those protections will not expire until one year after the end of the declared state of emergency.
 Nevada	By executive order, Nevada Governor Steve Sisolak declared that all providers of medical services related to COVID-19 are performing services for emergency management and are therefore state actors with civil liability protection for all functions and activities undertaken in response to the state of emergency with exceptions for cases of willful misconduct, gross negligence or bad faith.	Effective April 1, 2020 and continues through the duration of the declared state of public health emergency.
 New Hampshire	The New Hampshire Attorney General issued an opinion that "health facilities, and their employees and volunteers, that engage in emergency management activities so long as the facility and its employee or volunteer was complying with or reasonably attempting to comply with the applicable state of emergency orders or rules" are immune under New Hampshire Revised Statutes, Section 21-P:41. For those providing emergency management activities, this code section provides liability protection from lawsuits arising from the death or injury to persons, or for damage to property,	Effective March 13, 2020 and continues through the duration of the declared emergency.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
New Hampshire (cont.)	resulting from those activities. This statute also: (1) waives professional license requirements during the emergency; (2) includes paid and unpaid employees and volunteers in the definition of "emergency management worker"; (3) permits dental and nursing students to assist in an emergency under "general" supervision of a medical staff; and (4) entitles emergency workers who are not government employees to receive compensation from the State as if they were government employees.	
 New Jersey	New Jersey's Legislature passed, and Governor Phil Murphy signed into law, legislation providing civil and criminal liability protection to certain healthcare professionals and healthcare facilities during public health emergencies and to facilitate the issuance of certain temporary licenses and certifications during public health emergencies.	Effective March 9, 2020 and continues through the duration of declared emergency.
 New York	The New York State Legislature codified Governor Andrew Cuomo's executive order providing for liability protection for medical services provided during the COVID-19 emergency. The law protects facilities and healthcare professionals from any liability, civil or criminal, for any harm caused by an act or omission in connection with providing healthcare services in support of the State's response to the COVID-19 outbreak. Liability protection will not apply if the harm was caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intent to inflict harm, committed by the healthcare facility or healthcare professional, provided, however, that decisions resulting from a resource or staffing shortage should not be considered to be any of the foregoing.	I. The comprehensive broad immunity law became effective March 7, 2020 through August 3, 2020. II. Limitations to the broad immunity law became effective on August 3 (when the Governor signed the legislation). The amended law provides liability protection only when providing care to COVID-19 patients

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
New York (cont.)		(confirmed or suspected) and remains in effect through the duration of the declared emergency.
 North Carolina	The North Carolina State Legislature passed and Governor Roy Cooper signed into law Senate Bill 704, a comprehensive bill related to the COVID-19 crisis that includes civil liability protection for any healthcare provider, facility or entity that has legal responsibility for acts or omissions of a healthcare provider, for any harm or damages alleged to have been sustained as a result of an actor omission in the course of arranging for, or providing healthcare services, so long as the health services are: provided in good faith; during the COVID-19 state of emergency; and the arrangement or provision of services is impacted directly or indirectly in response to, or as a result of, the COVID-19 pandemic. These protections do not apply in cases of gross negligence, reckless misconduct, or intentional infliction of harm. Acts, omissions, or decisions resulting from a resource or staffing shortage shall not be gross negligence, reckless misconduct, or intentional infliction of harm. Additionally, by executive order, the Governor declared that all persons who are licensed, or otherwise authorized under his executive order, to perform professional skills in the field of health care are emergency management workers providing emergency services and therefore entitled to the state actor civil liability protection to the extent provided under state of emergency orders. This liability protection does not apply in willful misconduct, gross negligence, or bad faith.	Effective March 10, 2020 and continues through the duration of the declared public health state of emergency.
 Ohio	Since 2019, Ohio has had an emergency disaster statute that states that a healthcare provider or emergency medical technician that provides emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, as a result of a	Effective March 9, 2020 and continues through the duration of the federal, state, or

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Ohio (cont.)	disaster, is not liable in damages to any person in a tort action for injury, death, or loss to person or property that allegedly arises from an act or omission of the healthcare provider or emergency medical technician in the healthcare provider's or emergency medical technician's provision of those services or that treatment or care if that act or omission does not constitute reckless disregard for the consequences so as to affect the life or health of the patient. This statute was activated by Governor Mike DeWine via his March 9, 2020 executive order.	political subdivision disaster declaration.
 Oklahoma	The Oklahoma State Legislature passed, and Governor Kevin Stitt signed into law Senate Bill 300, which provides limited civil liability protection for providers and facilities: limited because it only applies where there is a diagnosis of suspected or actual COVID-19. The legislation spells out that this liability protection will not apply to a healthcare action where there is not a diagnosis of suspected or actual COVID-19. In addition to the legislation above, the Oklahoma State Legislature passed, and the Governor signed into law, Senate Bill 1946. This is a broad liability protection bill that appears to cover hospitals and physician practices. It provides that no person, or agent of a person, who conducts business in Oklahoma shall be liable in a civil action for a claim of exposure or potential exposure to COVID-19, if the alleged act or omission was in compliance with or consistent with State or federal guidance applicable at the time. If two or more sources of guidance are applicable to the conduct or risk at the time of the alleged exposure, the person, or his or her agent, shall not be liable if the conduct was consistent with any applicable guidance. “Person” is defined as an individual, firm, partnership, corporation, or association.	Effective May 12, 2020 for claims filed on or after May 12, 2020 and continues through October 31, 2020 or through the end of the declared state of emergency, whichever is later. In addition: OK Senate Bill 1946 protections are effective for COVID-19 related claims filed on or after May 21, 2020. The law does not provide a sunset or expiration date.
 Pennsylvania	Pennsylvania Governor Tom Wolf issued an executive order providing healthcare providers broad liability protection for COVID-19 related services. The order also provides other regulatory relief allowing for flexibility	Effective March 6, 2020 and continues through the duration of the

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Pennsylvania (cont.)	including licensure, and telehealth, and allowing facilities to relax scope of practice and supervision requirements for healthcare providers working in their facilities. The order specifically directs that healthcare providers, facilities, and alternate care sites "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 or damage to property as a result of the emergency services activity or disaster services activity described above, except in the cases of willful misconduct or gross negligence, to the fullest extent permitted by law. This grant of liability protection shall not extend to healthcare professionals rendering non-COVID-19 medical and health treatment or services to individuals."	disaster emergency.
Rhode Island	By executive order, Rhode Island Governor Gina Raimondo provided limited liability protection to healthcare individuals and organizations, including healthcare workers providing community-based health care, services at surge hospitals and services in existing hospitals, nursing facilities, and alternative nursing care sites providing health services during the COVID-19 pandemic to patients affected by COVID-19. COVID-19 healthcare workers and organizations were specifically included in the definition of a "disaster response worker" under existing State law, Section 30-15-15, that stated almost all individuals who respond to a disaster are deemed a "disaster response worker" and "shall [not] be liable for the death of, or injury to, persons, or for damage to property, as a result of disaster response activity." While the order contained several other parts that expired on May 8, 2020, it appears that the affirmation and interpretation that healthcare workers and organizations fall within the disaster response law remains in effect as long as there is a disaster/state of emergency.	Effective March 9, 2020 and continues through the duration of the disaster emergency.
Tennessee	Tennessee Governor Bill Lee issued an executive order providing limited liability protections to healthcare providers for any illness, injury, death, or damages	Effective July 1, 2020 and sunsets on July

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Tennessee (cont.)	related to the contraction of or suspected contraction of COVID-19 alleged to have been caused by acts or omissions within the limits of the provider's license, certification, registration, or authorization. The protections include but are not limited to acts or omissions resulting from a lack of resources attributable to or arising out of the provider's response to the COVID-19 pandemic. Protections do not include any act or omission caused by gross negligence or willful misconduct. In addition to the Governor's executive order, the State enacted Senate Bill 8002 b, "Tennessee COVID-19 Recovery Act" (Act), supplanting the executive order. The Act provides tort liability protections for claims related to COVID-19, as well as setting the standard of proof a plaintiff must meet in such claims. Under the law, there is no claim against any person (including businesses, corporations, associations, etc.) for loss, damage, injury or death (hereinafter injury) arising from COVID-19 unless the plaintiff proves by clear and convincing evidence that the person proximately caused the injury by an act or omission constituting gross negligence or willful misconduct.	1, 2022 but will continue to apply to any Injury occurring before that date to which none of the listed exceptions apply.
Utah	Governor Gary Herbert signed into law Senate Bill 3002 providing limited liability protection for healthcare providers and facilities during the COVID-19 pandemic by placing them under the existing law covering a "major public health emergency." Healthcare providers and facilities are immune from liability for "any harm resulting from any act or omission in the course of providing healthcare" if: (1) the health care is provided in good faith; (2) the care was provided "for the illness or condition that resulted in the declared major public health emergency"; (3) the act or omission was not the result of gross negligence, intentional or malicious conduct. This liability protection applies even if: (a) the provider accepted payment for services, and (b) health care was provided not within the healthcare provider's education, training, or experience if the services fell within those provided by a licensed healthcare provider and were provided in good faith during an urgent shortage of healthcare providers. Additionally, a	Effective March 6, 2020 through the duration of the declared major public health emergency.

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Advocacy Spotlight: COVID-19 Crisis Brings New Liability Concerns to Healthcare Providers (cont.)

COVID-19 Healthcare Provider Medical Liability Protection Actions (cont.)

State	Summary	Status
Utah (cont.)	healthcare provider is immune from liability if providing treatment under written recommendations by a federal government agency regarding the use of a qualified treatment for the illness or condition that was the cause of the major public health emergency, and the healthcare provider describes to the patient or patient's representative the positive and negative outcomes of the qualified treatment. This discussion must be documented in the patient's file and whether consent is given. This liability protection does not apply to gross negligence and intentional or malicious misconduct. If the federal government gives two or more written recommendations regarding the qualified treatment, the healthcare provider must follow the most current version.	
 Vermont	By executive order, Vermont Governor Phil Scott adopted a rule that interprets Vermont's healthcare providers, facilities, and volunteers as emergency management service providers. This protects the listed entities under existing Vermont Law 20 V.S.A. Section 20 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. The covered services include cancelling or denying elective surgeries and procedures or routine care to respond to the COVID-19 outbreak.	Effective March 13, 2020 and continues through the duration of the order.
 Wyoming	In 2013, Wyoming enacted WY Stat. Sec. 35-4-114 that protects any healthcare provider or other person who in good faith follows the instructions of the state health officer in responding to a public health emergency. It provides that the healthcare provider is immune from any liability arising from complying with those instructions, except regarding acts or omissions constituting gross negligence, or willful or wanton misconduct. This liability protection applies to healthcare providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency.	Effective March 14, 2020 and continues through the duration of the declared public health emergency.

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LEGISLATION

Concurrent with the pursuit of medical liability protections for healthcare providers practicing in a pandemic, The Doctors Company advocated on several pieces of legislation such as the passage of liability reform in Missouri and clarifying medical professional liability insurance coverage requirements in Colorado.

In Colorado, The Doctors Company advocated for the enactment of HB 1041 to remedy a drafting error in legislation enacted in 2019 that caused confusion as to whether physician assistants (PAs) were required to have their own stand-alone $1M/$3M malpractice insurance policies rather than being covered under a shared policy with their supervising physician. The 2020 legislative fix resolved the confusion by permitting the Colorado Medical Board to eliminate the ambiguity, which it reviewed in its May 2020 meeting. The Doctors Company continued its advocacy at the Medical Board which was successful.

In Missouri, personal injury lawyers have routinely sought punitive damages in medical liability lawsuits when they were unwarranted as a tactic to scare physicians into settlements. This resulted in increased defense costs for healthcare providers and was particularly unfair in cases when punitive damages were awarded for simple medical error. The Doctors Company advocated for much needed clarification of the standard of liability for punitive damages. Our Missouri legislative counsel was integral in advocating for this legislation and led the effort at the State Capitol. The law now shifts the burden of proof standard for punitive damages for claims against healthcare providers by establishing that an award of punitive damages against a healthcare provider shall be made only upon a finding that the evidence clearly and convincingly demonstrated that the healthcare provider intentionally caused damage to the plaintiff, or demonstrated malicious misconduct that caused damage to the plaintiff. The new law states that "punitive damages are damages intended to punish or deter malicious misconduct or conduct that intentionally caused damage to the plaintiff, including exemplary damages and damages for aggravating circumstances."

Below are summaries of additional pieces of legislation impacting the practice of medicine or liability that were of note during the second quarter. For information on legislation enacted in the first quarter of 2020, please see the Spring Issue of Government Relations Advocacy Update.

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STATES

Civil / Medical Liability | Practice of Medicine

Alabama

AL SB 330 – COVID-19 HCP Immunities
This bill would have provided civil liability protections for healthcare providers for acts or omissions related to provision of care for the COVID-19 pandemic. Exceptions were provided for wanton, reckless, willful, or intentional misconduct. In cases where a court determined that these protections did not apply, SB 330 would have provided a "safe harbor" for healthcare providers who made reasonable efforts to comply with applicable public health guidance. Finally, for cases where no other liability protections applied, SB 330 would have limited the class of damages available for award. (Status: Failed)

AL SB 114 – Designated Healthcare Providers
This bill would have granted the citizens of Alabama the right to select a certified registered nurse practitioner, certified nurse midwife or assistant to a physician as his or her designated healthcare provider when the care to be provided was within the scope of practice of the collaboration agreement between the nurse practitioner, midwife or physician assistant. It would have also limited the number of collaboration agreements a physician could maintain to nine (9). (Status: Failed)

Alaska

AK SB 120 – Crisis Stabilization Center Physician Assistant Authority
Physician assistants have been added to the list of healthcare professionals who may determine that a psychotropic medication should be administered to a patient without the patient's consent if there is a current or impending crisis situation that requires immediate use of the medication to preserve the life of, or prevent significant physical harm to, the patient or another person, and the medical record is documented that alternative courses considered or attempted were insufficient. (Effective Date: 04/30/2020)

Arizona

AZ HB 2051/SB 1027 – Pelvic Examination Consent
These bills would have made it an act of unprofessional conduct for a healthcare provider to conduct a pelvic exam of an anesthetized or unconscious patient without having first obtained informed consent. Exceptions would have been provided where: the exam was within the scope of the surgical or diagnostic exam for which the patient had provided informed consent, for medical emergencies, and for forensic medical examinations requested by law enforcement. (Status: Failed)

AZ SB 1469– Continuing Medical Education
This bill would have allowed Arizona healthcare providers to claim one hour of continuing medical education credit (CME) for each hour of free medical services the healthcare provider provided to eligible patients, up to a maximum of eight continuing education credits per licensure period. (Status: Failed)

California

CA SB 425 – Reporting Requirements
Healthcare facilities or other entities that allow practitioners to practice or provide care to patients are required to report written allegations of sexual abuse or sexual misconduct within 15 days of receipt, or face fines ranging from $50,000 to $100,000. The legislation requires that where the Medical Board issues a probationary physician's and surgeon's certificate, the certificate shall be posted on the Board's website for 10 years from issuance and an operative statement of issues leading to the probationary status will be provided to any member of the public who makes a request. (Effective Date: 01/01/2020)

CA SB 697 – Supervision of Physician Assistants
This law modifies the definition of "supervision" in the context of licensed physicians overseeing the work of physician assistants. Under this new definition, supervision of a physician assistant does not require the physical presence of the supervising physician and surgeon (there is an exception for general acute care hospitals). However, supervision does require: (1) adherence to adequate supervision as agreed to in the practice agreement, and (2) that the physician and surgeon be available by telephone or other electronic communication at the time the PA examines the patient. Nothing in this new definition shall be construed as prohibiting the Medical Board from requiring the physical presence of a physician and surgeon as a term or condition of a PA's reinstatement, probation, or imposing discipline. (Effective Date: 01/01/2020)

Colorado

CO HB 1014 – Misuse of Human Reproductive Material
A healthcare provider is subject to a Class 6 felony prosecution, unprofessional conduct disciplinary action, and a new civil cause of action for knowingly using gametes, eggs or sperm from a donor during assisted reproduction for which the patient did not expressly consent, and a child is born as a result. (Effective Date: 08/05/2020)

CO HB 1041 – Physician Assistants Financial Responsibility
A physician assistant, practicing for at least three years, may use shared policies to satisfy medical liability insurance requirements if the Colorado Medical Board permits. (Effective Date: 03/20/2020)

CO HB 1216 – Nurse Practice Act
The renewal of the Nurse Practice Act comes with several new requirements, including: (1) requires malpractice insurance companies must now report paid claims that were part of a judgment or settlement, not just the judgments and settlements; (2) introduces many new grounds for discipline that expand the definition of misconduct, states when substance use must be reported, and what constitutes sexual misconduct; and (3) reduces the number of mentorship hours after receiving prescription authority. (Effective Date: 07/01/2020)

CO HB 1330 – UC Health Physician Immunity
University of Colorado Health physicians who do not work at the UCH's Anschutz Medical Campus or a facility that is licensed under UCH's hospital license are no longer protected by government immunity. (Effective Date: 09/01/2020)

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Colorado (cont.)		**CO HB 1061 – HIV Infection Prevention** This bill authorizes a pharmacist to prescribe and dispense HIV infection prevention drugs if the pharmacist fulfills specific requirements, including having a doctorate in pharmacy, carrying "adequate" professional liability insurance (no specified limits provided), and completing training from an accredited program. (Status: Pending)
Federal		**US SB 4317 – Healthcare Provider Pandemic Limited Liability** Congress is considering legislation called the "Safe to Work" Act. It is a proposal to provide targeted and limited liability protections to healthcare providers, other essential workers, and businesses with respect to the COVID-19 pandemic. (Status: Pending)
		US HB 7695 – Telehealth Use During Pandemic Congress is exploring various policies and experiences to determine the efficacy of telehealth. This legislation requires the Secretary of Health and Human Services to report on the use of telehealth during the pandemic and the impact it had on costs and access to healthcare. (Status: Pending)
 **Florida**		**FL SB 404 – Parental Consent for Abortion** Florida modified its law regarding provision of abortion services to a minor by adding a parental or legal guardian (hereinafter identified as parent or parental) consent provision. Under SB 404, a physician may not perform or induce the termination of a pregnancy of a minor unless the physician has complied with the new notice and consent requirements. The consenting parent must provide a copy of a government-issued proof of identification and then sign the consent form under the penalty of perjury. The consent form along with a copy of the identification must be notarized. A violation of this requirement is now a felony punishable by up to five years in jail and a $5,000 fine. (Effective Date: 07/01/2020) **FL SB 698 – Reproductive Battery is Felony Offense** This law creates the felony offense of reproductive battery, which is defined as intentionally: (1) transferring reproductive material into a patient, or (2) implanting a human embryo of a donor, without the patient's consent, to the reproductive material or embryo from that donor. A violation of this law is a third-degree felony, which is punishable by up to five years imprisonment and a fine of up to $5,000. If the licensee uses his or her own genetic material, the offense is a second-degree felony. (Effective Date: 07/01/2020)
 **Georgia**		**GA HB 987 – Whistleblowers: Disabled Adults and Elder Persons Act** This law amends the Georgia "Disabled Adults and Elder Persons Protection Act (Act)" to provide additional measures for the protection of elderly persons. A new section was added to the Act to offer "whistleblower" protection, which prohibits discrimination or retaliation for reporting of elder abuse or participation in investigations of elder abuse, etc. It also prohibits discrimination and retaliation against elderly individuals who are the subject of any report or investigation and increases the fines and penalties for violations of the Act. The Department of Community Health (Department) has the authority to impose a fine of up to $2,000 a day (this is an increase from $1,000 a day) for each violation of a law, rule, or regulation, related to the initial or ongoing licensing of any agency, facility,

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Georgia (cont.)

institution or entity up to a total of $40,000. The Department has the authority to impose a mandatory fine of no less than $5,000 per violation related to licensing where the violation has caused the death of or serious physical harm to a resident in any such facility. (Effective Date: 06/30/2020)

GA HB 1060 – Gender Reassignment
HB 1060 would have created a felony act for healthcare providers who engaged in any practice, or caused any practice to be performed, regarding gender selection, gender reassignment or any like procedure. If convicted of violating the statute, the healthcare provider would have been sentenced to no less than one, and no more than ten, years in prison. The legislation would have specifically waived any claims the healthcare provider had for sovereign immunity, qualified immunity, or official immunity from lawsuits. (Status: Failed)

Idaho

ID HB 392 – Volunteer Healthcare Provider Immunity
Students under the supervision of a licensed provider are now included in the definition of healthcare provider under the volunteer immunity act. (Effective Date: 07/01/2020)

ID HB 509 – Gender on Birth Certificates
Idaho modified its birth certificate law requiring the "sex" of the newborn be assigned at birth based on the immutable biological and physiological characteristics determined by chromosomes and internal and external reproductive anatomy present at conception and generally recognizable at birth as male or female. In cases where an individual suffers from a physiological disorder of sexual development and the individual's biological sex cannot be visibly recognized at birth as male or female, the physician shall make a presumptive determination of the individual's sex. (Effective Date: 07/01/2020)

ID HB 578 –Do Not Resuscitate Orders for Minors
A physician may not issue for a minor patient orders not to resuscitate, withhold artificial life-sustaining procedures, withhold artificial nutrition and hydration, and similar orders, unless at least one parent or legal guardian has first been notified of the physician's intent to institute such an order. This rule shall not apply after 72 hours if diligent efforts have been made to contact the parents or legal guardian and there has been no response. If a parent or legal guardian responds, the parent or guardian has 48 hours to request transfer of the minor to another facility. (Effective Date: 07/01/2020)

ID SB 1331 – Chiropractor Prescriptions
A chiropractic physician certified in clinical nutrition may issue a prescription for certain vitamins, minerals, liquids, epinephrine, and oxygen (under certain circumstances). (Effective Date: 07/01/2020)

Indiana

IN SB 19 – Eye Care Professional Telehealth Authorization and Liability Provisions
Ophthalmologists and optometrists are authorized telehealth providers and can prescribe medical ophthalmic devices. In addition, prescribers are not liable for damages or injury resulting from packaging, manufacturing, dispensing of contact lenses or eyeglasses unless they are also the seller. (Effective Date: 07/01/2020)

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Indiana (cont.)	**IN SB 21 – Out of State Prescriptions** Pharmacists now have a duty to honor prescriptions from advance practice registered nurses and physicians (in addition to previously authorized prescribers) who are licensed under the laws of another state. (Effective Date: 03/14/2020)
 **Iowa**	**IA SB 2338 – Phantom Damages and Healthcare Provider Immunity** Iowa enacted legislation requiring transparency when medical expenses are being sought and awarded in medical liability lawsuits. Injured parties generally have the right to recover the reasonable cost of medical expenses. However, billed amounts may be much higher than the actual costs incurred. This bill allows finders of fact to see what was actually paid and establishes that damage awards are to be in the amounts necessary to pay the actual medical bills to avoid a windfall for the injured party. This law enacted COVID-19 liability reform, too. (Effective Date: 07/01/2020; COVID-19 immunity provisions retroactive to 01/01/2020)
 **Louisiana**	**LA HB 826 – Healthcare Provider Immunity** With exceptions for gross negligence or wanton or reckless misconduct, HB 826 provides immunity for actual or alleged exposure to COVID-19; limits employee claims to claims determined to be compensable under the State's workers' compensation laws; and provides immunity for the design, manufacture, distribution or use of personal protective equipment so long as the defendant was in substantial compliance with local, state, or federal safety procedures. (Effective Date: 06/13/2020) **LA SB 491 – Emergency Liability Protections** SB 491 provides volunteers (persons or organizations), who are acting outside the typical scope and course of their operations during a declared state of emergency, liability protections for injury, death, or damage to property with exception for gross negligence or willful misconduct. (Effective Date: 06/12/2020)
 **Maine**	**ME HB 1392 – Pelvic Examination Consent** A patient's specific oral and written consent must be obtained before performing or supervising a pelvic, rectal, or prostate examination. (Effective Date: 06/16/2020) **ME HB 1463 – Care at Birth** If one or both eyes of an infant become reddened or inflamed at any time after ophthalmic drops treatment within four weeks after birth, the midwife, nurse or person having charge of the infant shall report the condition of the eyes at once to the infant's primary care provider. (Effective Date: 06/16/ 2020) **ME SB 537 – Physician Assistant Licensing and Scope of Practice** In response to the COVID-19 pandemic, this new law removed the requirement that physician assistants (PAs) must have a physician plan of supervision to obtain a license, and greatly expands PAs scope of practice. (Effective Date: 03/18/2020)
 **Maryland**	**MD HB 364 – Identification Requirements** Healthcare providers must wear personal identification tags that include their first name, nickname, and last name, or the full name of the individual that is commonly used when working. This requirement applies to employees and other individuals providing care in Maryland hospitals or nursing facilities, too. (Effective Date: 10/01/2020)

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Maryland (cont.)

MD HB 448 – Telehealth Expansion
The definition of healthcare provider has been expanded for purposes of providing telehealth services and it now includes individuals who are "certified, or otherwise authorized by law to provide healthcare services" in addition to licensed individuals. The law restricts healthcare providers from prescribing Schedule II opiates through telehealth unless the patient is in a healthcare facility or if the Governor has declared a state of emergency. Finally, the bill encourages the Governor to join interstate compacts for healthcare providers. (Effective Date: 04/03/2020)

MD HB 837 – Implicit Bias Training
The Maryland Department of Health must develop a certificate of training program for healthcare professionals seeking, or who are required to have, implicit bias training when delivering perinatal care. Beginning January 1, 2022, healthcare professionals who are an employee of, or involved in, the care of a patient at a perinatal care facility must complete this training. (Effective Date: 07/01/2020)

Michigan

MI HB 5412 / HB 5413 / HB 5414 / HB 5415 / HB 5416 – Telehealth Services Coverage
Michigan now prohibits health insurance insurers (HB 5412) and group or non-group healthcare corporations (HB 5413) from requiring face-to-face contact when appropriate care can be delivered through telehealth services. Mental health services delivered by telehealth are codified in the State's Mental Health Code (HB 5414). The State now requires coverage for remote patient monitoring services through the medical assistance program (Medicaid) and Healthy Michigan program (HB 5415). Finally, beginning October 1, 2020, telemedicine services are covered under the medical assistance program and Healthy Michigan program if the originating site is an in-home or in-school setting, in addition to any other originating site allowed in the Medicaid provider manual or any established site considered appropriate by the provider. (Effective Date: 06/24/2020)

Mississippi

MS SB 3049 – Healthcare Provider Immunity
Healthcare providers have been given immunity from suit for any injury or death directly or indirectly sustained because of the provider's acts of omission while providing healthcare services related to a COVID-19 state of emergency. The applicable period of immunity is retroactive to March 14, 2020 and continues through one (1) year after the declared end of the COVID-19 state of emergency. The immunity covers both acts and omissions in the course of treating COVID-19 related medical issues, as well as acts and omissions not related to COVID-19 specific medical issues, but intended to support the State's response to the COVID-19 state of emergency. The Doctors Company worked with the State Medical Society and other liability reform groups to help in the shaping of this legislation and supporting the enactment of these protections. (Effective Date: 03/14/2020)

MS HB 1520 – Pain Medication for Terminal Patients
This measure is designed to make it easier to prescribe pain medication for terminal patients in hospice during the COVID-19 crisis. The measure allows medical directors of hospices to prescribe controlled substances to patients who are suffering from terminal disease pain without the need for a face-to-face visit. It specifically exempts the minimum of one in-person visit requirement before prescribing for the period of June 25, 2020, through June 30, 2021. After June 30, 2021, normal rules for prescribing, including in-person visits, will once again apply. (Effective Date: 06/25/2020)

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Missouri

MO SB 591 – Punitive Damages
Missouri changed its punitive damages law to state that "punitive damages are damages intended to punish or deter malicious misconduct or conduct that intentionally caused damage to the plaintiff, including exemplary damages and damages for aggravating circumstances." This language replaced an older clause that defined punitive damages as those intended to deter willful, wanton, or malicious conduct. In addition, the law shifts the burden of proof standard for punitive damages for claims against healthcare providers. It now states that an award of punitive damages against a healthcare provider shall be made only upon a finding by the jury that the evidence clearly and convincingly demonstrated that the healthcare provider intentionally caused damage to the plaintiff or demonstrated malicious misconduct. (Effective Date: 08/28/2020)

New Mexico

NM HB 209 – Born Alive Medical Care: Abortion
This bill would have created a felony act for failure to provide appropriate medical care to an infant born alive during an abortion or an attempted abortion. A conviction for violation of this act would have resulted in either a second-degree or first-degree felony. Additionally, the legislation would have created a private right of action on behalf of the woman on whom the abortion was performed or attempted, and subjected the healthcare provider to monetary damages for all injuries, treble damages for the costs associated with the procedure, punitive damages and reasonable attorneys' fees. (Status: Failed)

New York

NY SB 8182 – Pharmacists Authorized to Administer COVID-19 Vaccinations
This bill authorizes a licensed pharmacist, pursuant to regulations promulgated by the commissioner, and consistent with the public health law, to administer immunizations to prevent COVID-19 in addition to the existing authority to administer influenza, pneumococcal, acute herpes zoster, meningococcal, tetanus, diphtheria, and pertussis. (Effective Date: 06/17/2020)

North Carolina

NC HB 118 – COVID-19 Transmission Reduction Strategies
Businesses (including sole proprietorships) are required to provide reasonable notice on premises owned, or under the business' possession, custody, or control, actions taken by the business for the purpose of reducing the risk of transmission of COIVD-19 on the premises. Businesses that follow this rule shall not be held liable for any claim for relief arising from any act or omission alleged to have resulted in the contraction of COVID-19 unless the act or omission amounts to gross negligence, willful or wanton misconduct or intentional wrongdoing. (Effective Date: 07/02/2020)

NC SB 704 – Healthcare Provider Immunity
Civil liability protection is provided to all healthcare providers, facilities and entities (Provider) 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 healthcare services during the COVID-19 state of emergency. The services provided for, or arranged for, by the healthcare practitioner must have been impacted directly or indirectly by the COVID-19 crisis and the provider must have been acting in good faith. The liability protections do not apply where the provider acted in gross negligence, with reckless misconduct, or with the intent to inflict harm. The Doctors Company worked with the

North Carolina (cont.)		State Medical Society and other liability reform groups to help in the shaping of this legislation and supporting the enactment of these protections. (Effective Date: 05/04/2020)
 **Oklahoma**		**OK SB 300 – Healthcare Provider Immunity** Healthcare providers and facilities have immunity 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. The act or omission must occur while arranging or providing COVID-19 treatment to a patient who was impacted by the act or omission in response to the COVID-19 crisis. The liability protections do not cover gross negligence or wanton or willful misconduct and do not apply to a person that did not have a suspected or confirmed diagnosis of COVID-19 at the time of the act or omission. The Doctors Company worked with the State Medical Society and other liability reform groups to help in the shaping of this legislation and supporting the enactment of these protections. (Effective Date: 05/12/2020) **OK SB 1728 – Wrongful Death Cause of Action: Abortion** This law creates a cause of action brought by parents or grandparents against a physician for the wrongful death of an unborn person through abortion. Unborn person is defined as the unborn offspring of human being from the moment of conception, through pregnancy, and until live birth including human conceptus, zygote, morula, blastocyst, embryo, and fetus. Specific circumstances are required for this new cause of action to apply. (Effective Date: 11/01/2020)
 **Oregon**		**OR SB 1523 – Born Alive Medical Care: Abortion** SB 1523 would have required healthcare providers to provide the appropriate degree of care to preserve the health and life of a child born alive after an abortion or attempted abortion. A conviction for violation of this legislation would have been a Class C felony, punishable by a maximum of five years imprisonment, a $125,000 fine, or both. (Status: Failed)
		OR HB 4081 – Agreements with Physician Assistants HB 4081 would have required a supervising physician or supervising physician organization to enter into a practice agreement with a physician assistant to use the services of the physician assistant. It would have prohibited the Oregon Medical Board from requiring a minimum number of hours during which the supervising physician must be physically present to provide supervision. It would have required that a physician assistant who prescribes and dispenses prescription drugs maintain specified records. (Status: Failed)
 **South Carolina**		**SC HB 5527 – Healthcare Provider Immunity** If enacted, this bill will provide a safe harbor for healthcare providers and facilities for any acts or omissions in the course of, or through the performance of, any business or healthcare service, as long as the provider reasonably adheres to public health guidance available at the time the conduct giving rise to a COVID-19 claim took place. The safe harbor will not apply in the case of knowingly reckless, willful, or intentional conduct, or where the provider failed to make any attempt to adhere to public health guidance. (Status: Pending)

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South Carolina (cont.)		**SC HB 4713 – Office-Based Medical Practices Safety Assessment** If enacted, this bill will require the owner of an office-based practice (a physician's office or location other than a hospital, surgery center, etc.) to conduct an annual risk assessment to identify potential areas or situations that may cause harm or where an incident may occur. The owner will be required to develop and implement a plan to provide for the appropriate level of necessary security. A violation of this legislation would lead to a civil fine of not more than $1,000 for a first violation or $5,000 for a subsequent violation. (Status: Pending)
 **South Dakota**		**SD SB 5 – Mental Health Professionals** A qualified mental health professional that transfers in good faith direct supervision of a person to a mobile crisis team, or a crisis intervention team certified law enforcement officer, is immune from any civil liability for the referral, absent gross negligence or willful misconduct. (Effective Date: 07/01/2020)
		SD HB 1005 – Telehealth Technology Provisions Without a proper provider-patient relationship, a healthcare professional may not prescribe a controlled drug or substance solely in response to an internet questionnaire or consult or telephone communication. (Effective Date: 07/01/2020) **SD HB 1056 – Assisted Living and Nursing Facility Video Monitoring** This new law requires assisted living centers and nursing facilities to first obtain a written consent from a resident and the resident's roommate, if any, prior to initiating video monitoring. It also provides many rules for video monitoring, prohibits audio monitoring, and regulates the use of video monitoring recordings. (Effective Date: 07/01/2020)
 **Tennessee**		**TN HB 2263 – Felony Offenses: Abortion** This law creates a multitude of felony offenses connected with the provision of abortion services. The legislation imposes myriad requirements that healthcare providers must meet prior to performing, or attempting to perform, this procedure. Failure to follow these requirements constitutes a felony offense, with different levels of felony prosecution applying, depending on which requirement is violated. (Effective Date: 07/13/2020)
		TN SB 2317 – Direct Medical Care Agreements Tennessee's Health Care Empowerment Act was expanded to allow all licensed medical professionals to enter into direct medical care agreements with patients without regulation by the State Department of Insurance. (Effective Date: 07/01/2020)
 **Virginia**		**VA HB 471 – Mandatory Reporting of Impaired Physicians** Virginia amended its reporting standards for CEOs, Chiefs of Staff, and other leadership at hospitals and other healthcare institutions regarding knowledge of impaired physicians. Prior to this legislation, Virginia law required CEOs, Chiefs of Staff and other leadership at hospitals and other healthcare institutions to report, within 30 days, information regarding their knowledge of healthcare professionals who were admitted for treatment of substance abuse or a psychiatric illness. Prior law applied to healthcare professionals who had been committed for such issues and the standard for reporting seemed to be leadership's knowledge of a

Virginia (cont.)		"reasonable probability" of the need for treatment or that commitment had occurred. This legislation changes the law from applying to "committed" healthcare professionals to applying to voluntarily or involuntarily admitted. It further changes the standard for reporting from knowledge of a "reasonable probability" to a "reasonable belief" standard. (Effective Date: 07/01/2020) **VA SB 120 – Immunity When Consulting on Boards and Committees** Among other things, SB 120 adds a new section to Virginia's civil immunity law regarding members and consultants to certain boards and committees. Under the new section, liability protections are extended to members of, or healthcare professional consultants to, committees, boards, commissions, etc., that primarily review, evaluate or make recommendations regarding career fatigue and wellness in healthcare professionals. The liability protections cover acts, decisions, omissions, or utterances done or made during the member's or consultant's performance of his or her duties. The new section also prohibits a participant in such a wellness program from being employed or engaged by such a program, or to have a financial ownership interest in such a program. (Effective Date: 07/01/2020)
 **West Virginia**		**WV HB 4003 – Telehealth Standards and Insurance Coverage** West Virginia enacted a new law that establishes standards and regulation for telehealth practice. In addition, this legislation generally requires that an insurer in West Virginia issuing or renewing a health insurance policy on or after July 1, 2020, provide coverage of healthcare services provided through telehealth services if those same services are covered through face-to-face consultation by the policy. It requires the West Virginia Public Employees Insurance system to cover telehealth services, too. (Effective Date: 06/05/2020) **WV HB 4375 – Speech Therapists and Audiologists Telehealth Care Authorization** West Virginia authorized joining the Speech Language Pathologies and Audiologist Compact and allows these services to be provided via telehealth. (Effective Date: 06/05/2020)

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JUDICIARY

The Doctors Company monitors court activity and participates in amicus curie, or "friend of the court," briefs to provide the courts with insight to the broader policy implications of the cases pending before them.

The cases below are a collection of important appellate decisions that emerged during the second quarter of 2020 having an impact on medical professional liability and the practice of medicine.

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Colorado

Supreme Court

Planned Parenthood Rocky Mountain v. Wagner

Controversial Healthcare Facility Liability for Mass Casualty Event

The Colorado Supreme Court held that when a clinic, in this case, an abortion clinic, receives threats of violence, fails to take sufficient precautions, and is the victim of a mass shooting event where visitors are injured or killed, the clinic may be liable even if the shooter is the cause of injuries because the violence was possibly foreseeable. The unfortunate result of this case is that any medical office, hospital, clinic, or other business is now open to liability for a mass casualty event if it is menaced by a disturbed individual or group that makes threats of violence and then commits violence. The Court also concluded that the clinic's affiliation with a national organization does not create liability for the national organization when there is no proof that it controlled the clinic or had a duty to provide the affiliate with resources to prevent or mitigate against a mass casualty event. (Decided: 06/08/2020)

Oregon

Supreme Court

Busch v. McInnis Waste Systems, Inc.

Damage Limitations in Personal Injury, Wrongful Death and Oregon Tort Claims Act Cases

The Oregon Supreme Court, in an oddly equivocal and confusing series of opinions, held that: (1) the cap on non-economic damages in common-law personal injury cases, while still potentially valid law, may not withstand a remedy clause challenge as applied to a specific case, since the Legislature failed to provide a sufficient trade-off when it took away a substantial part of the plaintiff's remedy, and in fact, the cap did not survive a remedy clause challenge in the Busch case, which the Court said it might have dealt a fatal blow; (2) the non-economic damages cap in statutorily created wrongful death cases (contained in the same law) may survive because wrongful death cases are based on a statute which includes limitations from the outset where there had always been a cap; and (3) the total damages cap in the Oregon Tort Claims Act, by which the State waives its sovereign immunity to tort liability, is still constitutional because a sufficient trade-off was made.

In the end, this decision leaves the status of the State's non-economic damages caps in personal injury cases in confusion, because the Court allowed cases that came to opposite conclusions on non-economic damages caps to remain precedent and valid law utilizing confusing reasoning. As a dissenting justice noted, the Oregon Supreme Court's decisions on the issue in Busch, the analysis of damages limitations as an unconstitutional limitation on a litigant's remedies, "are consistently inconsistent." This decision carries forward that history. (Decided: 07/09/2020)

Tennessee

Supreme Court

Young v. Frist Cardiology, PLLC

Physician Practicing in the State under an Exemption Cannot Qualify as an Expert Witness

The Tennessee Supreme Court held that the statute requiring expert witnesses to be licensed in the State requires actual licensure and an expert holding a license waiver may not qualify. (Decided: 04/20/2020)

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Texas

Supreme Court

Regent Care of San Antonio L.P. v. Detrick

Settlement Credit Application Before Cap on Non-Economic Damages

The Texas Supreme Court held that it is appropriate to apply settlement credits before applying the cap on non-economic damages, because to do otherwise would result in the outcome that a plaintiff would never receive non-economic damages if it settled with another defendant over the cap amount. (Decided: 05/08/2020)

OUR STORY: FOUNDED AND LED BY DOCTORS

Over 40 years ago, as California was gripped by a medical malpractice insurance crisis, leading physicians came together to pass historic medical liability reform legislation on behalf of doctors and other healthcare providers. In the wake of this achievement, The Doctors Company emerged as an entirely new type of insurance carrier—a carrier founded and led by doctors.

Malpractice lawsuits and jury awards in California skyrocketed during the 1970s, causing commercial insurance companies to raise rates by more than 300 percent or leave the market altogether. Thousands of physicians faced nonrenewal from their insurance companies, while others refused to provide care until the state addressed the crisis.

In May 1975, Governor Jerry Brown (D) called a special session of the legislature. During that session, leading medical groups helped secure the passage of the Medical Injury Compensation Reform Act (MICRA), landmark bi-partisan legislation that has become the national model for effective and durable medical liability tort reform.

After its passage, several of MICRA's leading proponents came together to establish a company that would continue the tradition of advocating for and protecting physicians. The Doctors Company founders recognized that an organization owned and led by physicians could focus on meeting the needs of its members rather than on answering the demands of outside stockholders. In addition, the member-owned structure meant that The Doctors Company would be uniquely aligned with physicians' interests and in an ideal position to represent and advocate for physicians in political and legal settings. The mission was clear: The Doctors Company would work relentlessly to advance, protect, and reward the practice of good medicine.

During the company's inaugural year in 1976, 450 physicians subscribed as members. Today, we are the nation's largest physician-owned medical malpractice insurer, protecting more than 90,000 members nationwide. As we grow, we remain true to the principles that inspired our founders—ensuring that the doctor's voice is heard, from the exam room, to the courtroom, to the nation's capital.

As long as personal injury trial lawyers continue to find new and inventive ways to undermine medical liability reforms, The Doctors Company will work to protect you and to safeguard your patients' access to healthcare.

More Information

Please contact The Doctors Company's Government Relations team at advocacy@thedoctors.com for more information.

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