

Wisconsin Legislature Passes COVID-19 Response Legislation

April 15, 2020

The State Legislature passed, and the Governor has signed, the state's COVID-19 response package, which includes liability immunity provisions. A late amendment broadens the measure and ensures there is no ambiguity about protections applying to COVID and non-COVID patients alike.

The legislation also includes provisions that will help the state draw down additional federal dollars for Medicaid as well as a provision related to out of network billing.

Below is the liability immunity language as adopted.

SECTION 98. *895.4801 of the statutes is created to read:*

895.4801 Immunity for health care providers during COVID-19 emergency.

(1) DEFINITIONS. In this section:

(a) "Health care professional" means an individual licensed, registered, or certified by the medical examining board under subch. II of ch. 448 or the board of nursing under ch. 441.

(b) "Health care provider" has the meaning given in s. 146.38 (1) (b) and includes an adult family home, as defined in s. 50.01 (1).

(2) IMMUNITY. Subject to sub. (3), any health care professional, health care provider, or employee, agent, or contractor of a health care professional or health care provider is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following:

(a) The action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020, by executive order 72, or the 60 days following the date that the state of emergency terminates.

(b) The actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following:

1. Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared as described under par. (a).
2. Any guidance published by the department of health services, the federal department of health and human services, or any divisions or agencies of the federal department of health and human services relied upon in good faith.

(c) The actions or omissions do not involve reckless or wanton conduct or intentional misconduct.

(3) APPLICABILITY. This section does not apply if s. 257.03, 257.04, 323.41, or 323.44 applies.