

April 22, 2020

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The Honorable Lawrence J. Hogan, Chair
The Honorable Andrew M. Cuomo, Vice Chair
National Governors Association
444 North Capitol Street NW, Suite 267
Washington, DC 20001

Re: State Action to Expand the COVID-19 Workforce by Limiting Liability for
Physicians During the Pandemic

Dear Governor Hogan and Governor Cuomo:

The American Academy of Physical Medicine and Rehabilitation (AAPM&R), a national medical organization representing more than 9,000 physicians who are specialists in physical medicine and rehabilitation (PM&R), urges states to provide greater medical liability protection to physicians providing care during the COVID-19 pandemic. We are sincerely appreciative of the actions that some state Governors, such as New York and Massachusetts, have already taken. We ask that all state Governors take similar measures to preserve and protect the health care workforce.

PM&R physicians, also known as physiatrists, treat a wide variety of medical conditions affecting the brain, spinal cord, nerves, bones, joints, ligaments, muscles, and tendons. PM&R physicians evaluate and treat injuries, illnesses, and disability, and are experts in designing comprehensive, patient-centered treatment plans. Physiatrists utilize cutting-edge as well as time-tested treatments to maximize function and quality of life.

Due to the rapidly growing number of cases and suspected cases of COVID-19, physicians, including physiatrists, are heeding calls to expand their day-to-day patient care responsibilities and join the frontlines in providing critical care to patients with COVID-19. Physiatrists, like other physicians and clinicians, are currently under tremendous burdens as they work to help COVID-19 patients survive this pandemic, in addition to more traditional rehabilitation such as restoring pulmonary function and addressing muscle weakness and debility.

The current state of health care in many areas of the country has our members working in dramatic situations, such as providing care without proper personal protective equipment, admitting acute care overflow patients to inpatient rehabilitation facilities including make-shift hospital units in rehabilitation gyms and even parking lots, and working with fewer staff as frontline workers contract the virus and must be quarantined. These circumstances raise concerns regarding the sufficiency of state liability protections for physicians providing services during this pandemic.



Although federal and certain state laws limit liability for health care professionals providing services in response to the COVID-19 public health emergency on a volunteer basis, we believe additional protection is necessary on a state-level for physicians whose medical practice and treatment decisions have shifted due to the pandemic. In a March 24, 2020 [letter](#) to governors, the Secretary of Health and Human Services, Alex Azar, requested that governors immediately take the following actions to extend the capacity of the health care workforce:

Develop a list of your state liability protections for in-state and out-of-state health professionals, including volunteers, during this national emergency, work with your state insurance commissioner to modify or temporarily rescind any provision in any medical malpractice policy issued in your state that may prevent insurance coverage of a health care professional's work responding to the COVID-19 emergency in another state, and work with insurers to have them waive such limitations in their policies.

During this trying time, state laws should not deter physicians from providing necessary and potentially lifesaving care. To the extent current state law does not adequately shield physicians from liability, we respectfully request that all governors issue an Executive Order or that the state legislatures pass a law protecting *all* physicians who provide care in good faith and within the scope of their license from liability for any harm alleged to have been sustained in the course of providing medical services during the COVID-19 public health emergency.

Such protection should be broadly construed to apply to physicians who receive compensation for performance of duties and functions that are outside of their specialty to treat COVID-19 patients. Moreover, this protection should explicitly limit physicians' liability for harm resulting from government directives to cancel, delay, modify (e.g., treatment via telehealth) or deny care as a result of the COVID-19 pandemic. Lastly, states should take action to ensure that medical boards hold physicians harmless for their actions or omissions during the public health emergency.

In drafting such an Executive Order or state law, adequate safeguards should be included to eliminate protection against liability when the harm is caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the physician. Moreover, physicians should not enjoy limited liability protection when the physician renders the health care services under the influence of alcohol or an intoxicating drug.

Attached hereto is sample language that could be utilized to craft an Executive Order or state law on physician liability during the pandemic. This state action would

remove legal reservations and concerns many physiatrists have in treating patients they are not typically engaged in treating in their traditional rehabilitation practice, and allow all physicians to help provide vital care during this pandemic. Physicians are already risking their lives in treating COVID-19 patients; they should not have to risk their livelihoods.

We thank you and your colleagues for your continued leadership in this difficult time. If you have any questions or concerns regarding this request, please contact Brit Galvin, Health Policy and State Legislative Affairs Manager, Department of Health Policy and Practice Services, at bgalvin@aapmr.org or (847) 737-6004.

Sincerely,



Michelle S. Gittler, MD, FAAPMR
President, AAPM&R

cc: Bill McBride, Executive Director
National Governors Association

SAMPLE LANGAUGE

(a) A physician shall not be liable under State law for any physical, non-physical, economic, and noneconomic harm caused by an act or omission of the physician in the provision of health care services during the public health emergency with respect to COVID-19; provided that—

(1) The act or omission is in the course of providing health care services that are within the general scope of the practice for any physician licensed in the State, but may be outside the scope of the physician’s specialty license, registration, or certification, as defined by the State; and

(2) The physician acted in good faith in committing the act or omission.

(b) Subsection (a) shall apply to any physical, non-physical, economic, and noneconomic harm caused by an act or omission of the physician resulting from government directives to cancel, delay, modify (e.g., treatment via telehealth), or deny care as a result of the COVID-19 pandemic.

(c) A State medical board shall hold a physician harmless for an act or omission described in (a) and (b).

(c) Notwithstanding subsection (b), subsection (a) and (c) do not apply if—

(1) The harm was caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the physician;
or

(2) The physician rendered the health care services under the influence (as determined pursuant to applicable State law) of alcohol or an intoxicating drug.