

Practice Update

The Sun is Rising on COVID Liability Protection for Florida Healthcare Providers

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Good news is here for healthcare providers worried about being left out of COVID-19-related liability protections during the 2021 Florida Legislative Session! The Republican-led Legislature, supported by Governor Ron DeSantis, is upholding its commitment to protect businesses, including healthcare providers, from frivolous lawsuits filed because of exposure to COVID-19. While only a Senate-version of legislation for healthcare providers has been filed, the chair of the House Health & Human Services committee, Representative Colleen Burton (R-Lakeland), has unveiled a committee bill ([PCB HHS 21-1](#)) that has garnered early support from House Speaker Chris Sprowls (R-Palm Harbor).

In the meantime, Senate measure [SB 74](#), recently filed by Senator Jeff Brandes (R-St. Petersburg), was heard last week in its first committee of reference – Senate Judiciary, which is chaired by Senator Brandes. As filed, SB 74 provides immunity from civil liability for healthcare providers (including, but not limited to, hospitals, nursing homes, assisted living facilities, home health providers, and doctors) if supplies or personnel were not available to comply with government health standards or guidance related to the pandemic.

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Unlike the current draft of similar legislation (HB 7 and SB 72) intended to provide protection from COVID-19-related litigation for non-provider businesses, the current version of this legislation does not require a physician's affidavit in order to file suit. However, this legislation does include significant protections for providers, including the following:

- The initial complaint must be pled with particularity.
- The claimant must prove the provider's gross negligence or intentional misconduct when complying with government health standards or guidance, interpreting or applying the standards or guidance, or in the provision of a novel or experimental treatment.
- The claim must be commenced within one year of the:
 - Death of the injured individual due to COVID-19;
 - Hospitalization due to COVID-19;
 - First diagnosis of COVID-19; or
 - The effective date of the legislation.

As with the civil liability protection for non-provider businesses legislation, if approved by the legislature, this legislation would become law upon the Governor's signature. Also, most of its provisions would apply retroactively. The primary exception to this retroactivity is for civil actions against specifically named health care providers that are filed before the effective date of the legislation.

As with much other legislation, Democrats and Republicans are not aligned on all the issues. There were four amendments to SB 74 filed for consideration during last Wednesday's committee meeting. These addressed concerns about immunity, standard of proof, gross negligence, the commencement timeline, and providers previously cited by the state or federal governments for control

deficiencies and infection prevention. All of the amendments were filed by Democrats, and all failed.

The scope of coverage and parties entitled to such coverage may continue to evolve. During the Senate Judiciary Committee meeting, Senator Tina Polsky (D-Boca Raton) asked Chair Brandes to provide an example of gross negligence from his point of view. He responded, “Someone at a nursing home who tested positive for COVID, was sent home by the administrator, and told to come back to work immediately, while still COVID positive — that in my mind would be gross negligence.” It is not clear at this time what other actions would potentially constitute “gross negligence” as provided in the legislation. Also, the legislation identifies various professions as “health care providers,” including some professions, such as athletic trainers, that may not traditionally have been considered health care providers. Businesses concerned about COVID-related-liability should review with counsel the applicability of these protections.

There are many stages to go before this legislation, or any similar legislation, is passed and becomes law (if at all). It is likely that there will be many revisions to it, and interest groups will continue to file amendments to protect their specific concerns. Please feel free to contact the author or your Akerman attorney with any questions.

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