

Insights

U.S. - CORONAVIRUS (LEGAL) IMMUNITY – PROTECTIONS FOR NURSING HOMES

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As we reported in a [recent alert](#) on the [risky business of re-opening](#), businesses throughout the United States are working to obtain legal immunity from COVID-19 lawsuits, including class actions. Among those businesses are nursing homes battling on the front lines of the outbreak.

As the virus began to spread in the United States, the Center for Disease Control and Prevention (“CDC”) advised individuals who are 65 and older (and people of all ages with underlying medical conditions) to take extra precautions to avoid falling severely ill from the virus. Nursing homes serve this vulnerable segment of the population, and their residents are at high risk of being affected by COVID-19. As of today, the [death toll](#) at nursing homes is roughly 12,000, driven in large part by the fact that many COVID-positive patients are discharged from hospitals to nursing homes. For its part, the nursing home industry has made progress obtaining immunity from COVID-19 related lawsuits.

So far, at least 16 states have provided nursing homes—or more broadly, healthcare facilities—with some form of immunity from coronavirus lawsuits, including Alabama, Arizona, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, New York, Rhode Island, Wisconsin, and Vermont. Laws in some states, like [Virginia](#), already provide “civil liability immunity” for healthcare providers during emergencies. It is not yet clear, however, whether employees at nursing homes, including non-medical personnel, qualify as healthcare providers under state laws.

Both for-profit and not-for-profit nursing home industry associations have been pushing for immunity. Katie Smith Sloan, CEO of LeadingAge, a national association for not-for-profit aging services providers like nursing homes, had the following to say about the issue in a [March 25 letter](#) to Secretary Alex Azar of the Department of Health and Human Services: “Given the indispensable public-health role of [skilled nursing facilities] and [assisted living facilities] in tackling this pandemic, it is essential that they are afforded the fullest extent of legal immunity available under the law in connection with their efforts in responding to COVID-19.” Along similar lines, Mark Parkinson, President of the American Health Care Association, which represents for-profit nursing homes, has [said](#) that “[l]ong-term care workers and centers are on the frontline of this pandemic

response, and it is critical that states provide the necessary liability protection staff and providers need to provide care during this difficult time without fear of reprisal.” While some [advocates](#) believe that legal immunity will increase the risk for nursing home residents, most of the laws do not protect against liability arising from crime, fraud, gross negligence, and willful misconduct. Accordingly, any immunity granted to nursing homes and healthcare providers will be qualified by these exceptions, which will undoubtedly be invoked by plaintiffs in litigation.

It is not yet clear the extent to which nursing homes will be protected by these new laws, and we can expect to see class action lawsuits and other litigation test the limits of legal protections. For now, nursing homes should consult with their legal counsel and monitor legislation and executive orders to determine whether and to what extent their state is providing immunity.

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MEET THE TEAM



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