

# Legislation to Protect Health Care Providers Serving on the Front Lines of the COVID-19 Public Health Emergency

Prevailing in the nation's fight against COVID-19 requires the undivided focus and full deployment of health care facilities and professionals serving on the front lines of the pandemic across the country. Recognizing the challenge of preparing and caring for a surge of patients, New York and Kentucky were leaders in enacting legislation to support their health care facilities and professionals providing life-saving treatment to those diagnosed with COVID-19 while maintaining a functioning health care safety net for other vulnerable patients. Other states have provided similar supportive protections through Executive Orders. All these measures are designed to shield those on the front lines from the legal exposure that necessarily attends actions and decisions undertaken in responding to an unprecedented public health emergency. However, a patchwork of protections is no substitute for a uniform federal standard tied explicitly to the COVID-19 crisis.

**The AHA urges Congress to introduce and pass legislation to protect health care providers serving on the front lines of the pandemic.**

**Proposed Legislation.** The New York model incorporates the protections found in the Kentucky legislation and in doing so provides a balanced model for a uniform national standard tied to the COVID-19 crisis. Below are four areas, we recommend federal legislation encompass:

## **Broad but Targeted Protections.**

- It would shield health care facilities and professionals from liability, civil or criminal, resulting from an act or omission in the course of arranging for or providing health care services during the declared public health emergency.
- It acknowledges that less-than-ideal clinical circumstances, including resource or staffing shortages, may occur as health care providers battle the COVID-19 pandemic.
- It protects providers treating non-COVID-19 patients if such care is impacted by the COVID-19 public health emergency.

## **Protects Facilities, Professionals and Administrators.**

- Hospitals and health systems comprise an array of facilities and licensed professionals essential to the COVID-19 fight. To be effective, a shield law must protect all providers involved in responding to the pandemic. The proposed legislation would cover all licensed professionals and all facilities, and facilities' administrators and other non-clinical leadership.

## **Reasonable Limitations.**

- Incorporating the New York executive order and legislation that preceded it, federal legislation would grant immunity to health care facilities and professionals only if an act or omission giving rise to liability occurs as a result of the facility's or professional's response to the COVID-19 public health emergency.
- The health care facility or professional must be arranging for or providing health care services in good faith.
- Willful or intentional criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual would not be protected.

## **Time-limited.**

- The immunity shield provided by the statute would last only for the duration of the COVID-19 public health emergency declared by the Secretary of the U.S. Department of Health and Human Services, and would apply retroactively to January 31, 2020, the date on which the emergency was declared.