

WISCONSIN COVID-19 RESPONSE BILL: IMMUNITY FOR HEALTH CARE PROVIDERS

On April 15, 2020, Wisconsin Governor Tony Evers signed Wisconsin Act 185 into law in response to the COVID-19 pandemic. Included in this Act is a provision specific to health care workers in nursing homes, assisted living facilities, adult family homes, residential care apartment complexes and community-based residential facility settings.

Section 98 of the Act creates Wis. Stat. 895.4801 which is entitled “Immunity for health care providers during COVID-19 emergency”. The provision states that any “health care professional, health care provider, or employee, agent or contractor of a health care professional or health care provider” has immunity from civil liability and damages claimed for death of or injury to any individual caused by actions or omissions that:

- Are committed while the professional, provider, employee, agent or contractor is providing services during the state of emergency declared on March 12, 2020 including 60 days following the date the state of emergency is terminated; and
- Are related to health services provided or not provided in good faith or are consistent with the following:
 - Any direction, guidance, recommendation or other statement by a federal, state or local official or in response to the state of emergency;
 - Any guidance published by the department of health services, the federal department of health services or any divisions or agencies of the federal department of health and human services relied upon in good faith.
- Do not involve reckless or wanton conduct or intentional misconduct.

Healthcare providers and professionals are advised that many local governments have provided more expansive direction, guidance or recommendations during the state of emergency and if these have not been followed it could jeopardize the immunity provided under this statute.

For purposes of this immunity, “health care professionals” are individuals licensed, registered or certified by the state medical examining board and “health care providers” are identified in Wis. Stat. 146.38(1)(b) which includes many licensed providers in the state and adult family homes.

TAKEAWAY:

With the passage of this COVID-19 relief bill, Wisconsin-based senior living and social service providers would be well-served by reviewing the changes with their legal counsel. Understanding how this provision could impact their operations will be important as we operate during this difficult time.