

New Liability Limitations for Health Care Providers and Added Workforce Flexibility in Connecticut Should Not Obscure Duty to Treat During Pandemic

Connecticut Health Law

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On April 7, 2020, Governor Lamont issued Executive Order No. 7V, which amends in part Executive Order No. 7U issued on April 5. The April 5 Order added new protections from civil liability for certain health care professionals and facilities for good faith efforts to provide care during the COVID-19 pandemic, notwithstanding any provision of the Connecticut General Statutes or associated rules or regulations (see our prior blog for a summary of EO 7U). New Executive Order No. 7V expressly expands this protection from liability to *common law claims and any other state law*.

In addition, the Order expands the capacity of health care professionals to provide care by extending the period during which certain medical professionals may temporarily practice their profession under supervision but without a license or permit. For example:

- The duration of temporary permits for athletic trainers, respiratory care practitioners, physician assistants, occupational, therapists/assistants and master social workers has been extended for the duration of the pandemic (the Order also waives the temporary permit application fees for these professionals);
- The statutes governing licensure of physical therapists, physical therapy assistants, radiographers, registered nurses, nurse practitioners, clinical nurse specialists and nurse anesthetists have been modified to permit graduates and applicants for licensure to practice prior to licensure for the duration of the pandemic;
- Individuals who have completed certain accredited graduate degree programs or postgraduate clinical training programs in marital and family therapy may practice as marital and family therapy associates prior to licensure for the duration of the pandemic; and
- Graduates who have completed the requirements to practice as professional counselor associates may practice without obtaining a license for the duration of the pandemic.

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Still the Basic Rule of Appropriate Care Under the Circumstances Remains

While these and other actions taken by regulatory authorities in response to the current health care emergency provide welcome relief to providers and a stressed delivery system in Connecticut, this does not mean that no standard of care exists. Connecticut law still requires that institutional and individual health care providers provide that level of care, skill and treatment which, ***in light of all relevant surrounding circumstances***, is recognized as acceptable and appropriate by reasonably prudent similar health care providers (CGS §52-184c(a)) (emphasis added). The standard of care is, by the very terms of the statute, dependent on the circumstances, meaning that the standards for treatment during a public health emergency are not necessarily the same standards that apply in the absence of a public health emergency. This is further confirmed by the Governor’s recent Executive Orders.

Additionally, as COVID-19 continues to spread across the United States, some Connecticut health care workers have also raised questions related to their obligation to treat individuals infected with, or suspected of having, COVID-19— as well as those with other health conditions. There is little blanket guidance on this issue, but physicians at least can look to guidance issued by the American Medical Association (AMA) which has set up a web page dedicated to COVID-19.

With respect to the duty to treat during a disaster generally, physicians should review AMA Code of Medical Ethics Opinion 8.3, which provides that individual physicians have an obligation to provide urgent medical care during disasters and that this ethical obligation holds in the face of “greater than usual” risks to their own safety, health or life. The Opinion also provides, however, that the physician workforce is not an “unlimited resource” and that when participating in disaster responses, physicians have an obligation to evaluate the risks of providing care to individual patients against the need to be available to provide care in the future.

Opinion 11.1.3 addresses the allocation of scarce resources and sets forth the criteria that physicians should take into account when formulating allocation policies—with the first criterion being medical need, including urgency of need, likelihood and anticipated duration of benefit, and change in quality of life, while at the same time, making efforts to find or devise ways to reduce risk to health care personnel to the greatest extent possible.

Finally, Opinion 8.4 addresses the ethical use of quarantine and isolation (see also our prior Alert on how the State of Connecticut may implement quarantine and isolation orders.)

For more information on any of the above, please contact a Pullman & Comley Health Care attorney.

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