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## Executive Order Limiting Liability for Connecticut Providers Responding to COVID-19 Grants Protections for Health Care Professionals and Hospitals Grappling With Pandemic

April 5, 2020

By Stephen M. Cowherd and Margaret A. Bartiromo

On April 5, 2020, Connecticut Governor Ned Lamont issued a much-anticipated Executive Order that provides immunity from civil liability to health care professionals and certain facilities supporting the state's COVID-19 response efforts except for acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim under federal or state law. The Governor's Order specifically provides that the immunity conferred covers the entire time period extending from March 10, 2020, when the current public health and civil preparedness emergency was declared, including any period of extension or renewal. Accordingly, the immunity covers acts or omissions that occurred prior to the issuance of the Executive Order that are attributable to the COVID-19 response effort.

The Order states that "a compelling state interest exists" in providing liability protection for good faith actions taken to assist the state in combatting the current pandemic in order to encourage maximum participation in efforts to expand Connecticut's health care workforce and facilities capacity. It also notes how the current response has required the assistance of volunteer and out-of-state health care professionals, some of whom do not have liability insurance, and the need to call upon health care professionals to perform acts that they would not perform in the ordinary course of business. In pertinent part, the Order provides as follows:

"Notwithstanding any provision of the Connecticut General Statutes, or any associated regulations, rules, policies, or procedures, any health care

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professional or health care facility shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual's or health care facility's acts or omissions undertaken in good faith while providing health care services in support of the State's COVID-19 response, including but not limited to acts or omissions undertaken because of a lack of resources, attributable to the COVID-19 pandemic, that renders the health care professional or health care facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic and which resulted in the damages at issue, provided that nothing in this order shall remove or limit any immunity conferred by any provision of the Connecticut General Statutes or other law.”

The Executive Order’s proviso not removing or limiting any immunity already conferred by law would leave in place those already granted under C.G.S. §19a-570 et seq. for the withholding or removal of life support systems. The term "health care professional" is defined in the Order to mean any individual who is licensed, registered, permitted, or certified in any state in the United States to provide health care services and any retired professional, professional with an inactive license, or volunteer approved by the Commissioner of the Department of Public Health or her designee. The term "health care facility" is defined as a licensed or state approved hospital, clinic, nursing home, field hospital or other facility designated by the Commissioner of the Department of Public Health for temporary use for the purposes of providing essential services in support of the State's COVID-19 response.

### ***Order Also Makes Temporary Changes to Health Care Provider Reimbursement Rules***

**NOTE: EXECUTIVE ORDER NO. 7CC, ISSUED ON APRIL 21, 2020, REPEALS THE PROVISIONS SET FORTH IN THE FIRST TWO BULLETS BELOW. THE REPEAL IS RETROACTIVE TO APRIL 5, 2020.**

Executive Order 7U also makes a series of temporary changes to certain provisions of the Connecticut General Statutes governing reimbursement rates for providers that are intended to help health care consumers, including the following:

- A provision requiring that emergency services rendered to an insured patient by an out-of-network health care provider be reimbursed in the amount that the insured’s health care plan would pay for the services if rendered by an in-network health care provider as payment in full (the law in effect prior to this temporary change provided that the health care provider would be reimbursed at the greatest of: (i) the amount set forth in the previous sentence; (ii) the usual, customary and reasonable rate for such services; or (iii) the amount Medicare would reimburse for such services);
- Suspension of the application of the state statute (C.G.S. §38a-477aa(b)(3)(B)) that permits a health carrier and out-of-network health care provider to agree to a greater reimbursement amount than those provided in the first bullet;

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- A provision that hospitals providing care to uninsured patients receiving services for the treatment and management of COVID-19 may not collect from such patient (or such patient's estate) more than the Medicare rate for the services as payment in full;
- An amendment to subsection (l) of C.G.S. §19a-508c (which statute applies to facility fees charged for outpatient services at hospital-based facilities) to add a prohibition on the collection of facility fees by hospitals, health systems and hospital-based facilities for services received by an uninsured patient for the treatment and management of COVID-19 of more than the Medicare rate;
- A new law prohibiting hospitals from billing an individual who is not otherwise covered by a public or private health plan for services received for treatment and management of COVID-19, unless and until clarified by further executive order regarding distribution of any federal funding that may be made available to cover such services; and
- A new requirement that hospitals, health systems and hospital-based facilities maintain fiscal records to identify services provided to uninsured patients for treatment and management of COVID-19 and make such records available for claiming federal reimbursement, as applicable.

For more information, please contact a Pullman & Comley Health Care attorney.

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