
New Act Provides Protection from COVID-19 Related Civil Lawsuits for Long Term Care Facilities

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On May 4, 2020, North Carolina Governor Roy Cooper signed the ‘Emergency or Disaster Treatment Protection Act’ which provides protection from civil lawsuits related to the COVID-19 public health emergency. By definition, all nursing homes, assisted-living facilities, family care homes and combination homes are protected under these new statutes. Both the facility and individual workers are covered, including facility administrators, executives, supervisors, board members, officers, directors and other persons in managerial positions.

Section 90–21.133 provides civil immunity for physical and non-physical contact that results in injury or death to an individual if all of the following conditions apply:

- The health care services were provided during the period of the COVID-19 emergency declaration.
- Decisions and responses were impacted, directly or indirectly, by the COVID-19 pandemic.
- The health care services were arranged for or provided in good faith.

If these conditions are satisfied, then the plaintiff will be barred from recovering economic or non-economic loss resulting from negligence acts or omissions.

This immunity does not apply to gross negligence, reckless misconduct or intentional infliction of harm. In an effort to address an issue that has been problematic for long term care facilities, the statute specifically states that “acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered gross negligence, reckless misconduct or intentional infliction of harm.”

This civil immunity covers acts or omissions occurring from March 10, 2020 when Governor Cooper issued Executive Order # 116 which declared the emergency and continues through the calendar year 2020 so long as a state of emergency in response to COVID-19 is still in effect.

In addition to immunity, the Act addresses the following issues relevant to long term care facilities:

- DHHS/DHSR inspections: All annual and biennial inspections and regular monitoring have been suspended.

- DHHS/DHSR will still monitor, inspect or investigate situations as necessary to avoid serious injury, harm, impairment or death to employees or residents.
- DHSR has been directed to identify all facilities with noncompliance issues related to infection control or PPE usage in the 6 months prior to Governor Cooper's March 10, 2020 emergency declaration. The identified facility will be required to provide immediate training, designated by DHSR, on these issues.

Related Links:

- Dana H. Hoffman
- Young Moore's Coronavirus (COVID-19) Resource Center
- Nursing Home/Long Term Care Litigation
- Emergency or Disaster Treatment Protection Act
– <https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/2019-2020/SL2020-3.html>
- Governor Cooper issued Executive Order # 116 – <https://files.nc.gov/governor/documents/files/EO116-SOE-COVID-19.pdf>

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