

FHMS COVID-19 Resource Center:

PA GOVERNOR'S ORDER PROVIDES IMMUNITY FOR HEALTH CARE PROVIDERS

On May 6, 2020, Governor Wolf signed an executive [order](#) that provides partial immunity from civil liability to health care workers and facilities engaged in emergency or disaster services related to the COVID-19 disaster emergency proclaimed on March 6, 2020. The immunity does not apply to cases of willful misconduct or gross negligence.

The stated legal authority for this order is the Pennsylvania Emergency Code, specifically 35 Pa.C.S. § 7704(a) and (b), which provides similar immunity for the state and local agencies, and any person or entity under contract with them, to provide emergency services. By extension of that statute, the order makes the following entities and persons agents of the state when providing “emergency services activities” or engaged in “the provision of disaster services activities related to” COVID-19:

- Any individual who holds a license, certificate, registration, or certification to practice a health care profession or occupation,
- Any health care facility, nursing facility, personal care home, and assisted living facility, and
- Any alternate care site, community-based testing, or non-congregate care facility.

The order does not define “emergency services activities” or “the provision of disaster services activities related to [COVID-19.]” However, the Emergency Code defines “emergency services” as:

“The preparation for and the carrying out of functions . . . to prevent, minimize and provide emergency repair of injury and damage resulting from disasters . . . The functions include, without limitation, . . . medical and health services, rescue, . . . evacuation of persons from stricken areas, emergency welfare services, emergency transportation . . . and other functions related to civilian protection.”

35 Pa.C.S. § 7102. If injured parties file lawsuits, we anticipate challenges to this order, or allegations that conduct that falls under the immunity exceptions. Immunity has been held to apply to a PennDOT employee plowing snow in a disaster emergency, *see Zuppo v. Commonwealth*, 739 A.2d 1148 (Pa. Cmwlth. 1999), but it is unclear if the Governor may legally reclassify, exclusively for purposes of the immunity provided in § 7404(a) – (b), the health care providers and facilities as agents of the state.

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