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Ohio Enacts Additional COVID-Related Immunity Legislation

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As we [previously reported](#), Ohio enacted Amended Substitute House Bill 606 which provides qualified civil immunity for claims related to exposure to or transmission or contraction of coronaviruses. The immunity coverage is retroactive to March 9, 2020 and continues through September 30, 2021.

Two additions and a clarification of Ohio's immunity legislation were enacted when the General Assembly recently passed House Bill 151. It grants temporary qualified civil immunity to health care isolation centers during a disaster or emergency and temporarily authorizes emergency medical technicians to perform certain emergency medical services in hospitals. The law goes into effect on November 23, 2020.

Civil Immunity for Health Care Isolation Centers

HB151 provides temporary qualified civil immunity for "health care isolation centers" rendering certain services during a declared disaster or emergency. A health care isolation center is a facility operating under the guidance and monitoring of the Ohio Department of Health and specializing in the care of patients with an active or convalescent COVID-19 infection or who have other health care needs and require quarantine up to 14 days following exposure to COVID-19. The immunity is effective through September 30, 2021.

A center that provides health care services, emergency medical services, first-aid treatment, or other emergency professional care (including providing medication or medical equipment), as a result of or in response to a disaster or emergency is not subject to professional disciplinary action and is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property arising from: (1) an act or omission in the provision, withholding, or withdrawal of "health care services"; (2) any decision related to providing, withholding, or withdrawing those services; or (3) compliance with an executive order or director's order issued during and in response to an emergency or disaster. A center also is not subject to professional discipline or tort liability for claims that the center was unable to treat, diagnose, or test a person for any illness,

disease, or condition due to an executive or director's order or an order of a local board of health issued in relation to an epidemic, pandemic, or other public health emergency.

"Health care services" are broadly defined to include the diagnosis, prevention, treatment, cure, or relief of a health care condition, illness, injury, or disease. It also includes personal care services (assisting with activities of daily living and self-administration of medication and preparing special diets) and experimental treatments. A "tort action" includes claims arising under resident or patient bills of rights and contractual claims arising out of statutory or regulatory requirements applicable to centers as well as to actions on a medical claim.

In a tort action, the immunity does not apply if there is reckless disregard or intentional, willful, or wanton misconduct. In a professional disciplinary action, the immunity does not apply when there is gross negligence. The immunity also does not apply to actions outside the skills, education, or training of the center, unless undertaken in good faith and in response to a lack of resources caused by a disaster or emergency.

The immunity does not create a new cause of action or substantive legal right against a center, affect any immunities established by another section of the Revised Code or at common law, or affect any legal responsibility of a center to comply with any state law or administrative rule. While the immunity is in effect, it supersedes law that grants immunity to certain health care providers who render emergency services as a result of a disaster.

When the immunity does not apply, HB151 prohibits bringing a class action against a center

Emergency Medical Services in Additional Settings

HB151 temporarily broadens the settings in which first responders and emergency medical technicians (EMTs) are authorized to provide emergency medical services. HB151 permits those services to be provided in any setting, including any area of a hospital. This replaces current law that does not authorize a first responder to provide services in a hospital and limits an EMT's actions to the hospital's emergency department or while moving a patient from the emergency department. The expanded authority will be in effect until July 1, 2021.

A first responder or EMT may perform emergency medical services in any setting only if they do so under direction and supervision. The direction and supervision can be by a physician, physician assistant designated by a physician, or advanced practice registered nurse designed by a physician.

HB151 provides that a first responder or EMT is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's administration of emergency medical services, unless the services are administered in a manner that constitutes willful or wanton misconduct.

Conclusion

In addition to the two areas of expanded immunity described above, HB151 also clarified language in HB606. HB606 provides that a government order, recommendation, or guideline does not create a duty of care on a person that may be enforced in a cause of action or that may create a new cause of action or

substantive right against any person. HB151 clarifies that this language applies only to the temporary civil immunity regarding exposure to, or transmission or contraction of coronavirus that was enacted in HB606. Contact your Vorys lawyer if you have questions about Ohio's immunity legislation, about similar legislation in other states, and how they may apply to your operations.

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Vorys COVID-19 Task Force

We have established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.