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RE: Immunity from Civil Liability for Nursing Facilities

Senate Majority Leader Mike Shirkey and Speaker Lee Chatfield:

On behalf of the 350 members of the Health Care Association of Michigan, I am writing to request that you enact policy protecting health care facilities, including nursing facilities, from civil liability for medical services provided in support of the state's response to the COVID-19 pandemic.

Since the COVID-19 outbreak first hit Michigan in March, HCAM members have been on the front lines of the pandemic fighting to protect our state's most vulnerable senior population. These facilities are fighting this battle under extremely difficult conditions created entirely out of their control.

The novel coronavirus hit Michigan suddenly and severely, especially in the tri-county area, at a time when knowledge of the virus was limited and resources were scarce. Guidelines were changing on a daily basis, and we now know the world's initial understanding of the virus was flawed. The global supply chain for masks, gowns, gloves and other equipment was not able to keep pace with demand. For months, nursing facilities were not made a priority for testing or personal protective equipment (PPE) – resources that are absolutely essential to curb the impact of COVID-19 in these facilities.

Even under these impossible circumstances, the heroes in Michigan's nursing facilities continue to work tirelessly to care for their residents. Rather than facing a threat of lawsuit for situations created at no fault of their own, they should be supported as much as possible.

We are asking you to grant health facilities immunity during this crisis to allow them to take necessary measures to care for their residents and enhance public health without facing liability.

This immunity was initially granted to nursing facilities through Executive Order 2020-30 – Michigan already recognized the need for this protection for our front line workers. Many other states have also recognized the need for protection by offering this immunity to health care providers. Currently, health care providers including nursing facilities are not afforded this immunity, however, and therefore they face the prospect of legal liability for their attempts to respond to the COVID-19 outbreak. Circumstances created beyond their control could lead to liability and litigation for actions taken in this time of crisis, such as claims of negligent staffing, negligence in failing to stop the spread of the virus, and claims by staff of failing to provide adequate personal protection equipment.

Again, these circumstances are not the doing of facilities or the staff themselves – they are forced to work with what is available in these very difficult times. Affording them the necessary immunity will encourage the most robust and impactful action from nursing facilities during the pandemic.

Please do your part in providing this protection for Michigan's nursing facilities and our front line caregivers.

Respectfully,

Melissa Samuel
President/CEO
Health Care Association of Michigan