



April 21, 2020

Dear Interested Parties:

Thank you for your thoughtful and thorough comments and your efforts to protect health care providers as they work on the front lines of the COVID-19 pandemic. We have given serious consideration to your suggestions and have worked with the Attorney General's Office to analyze your requests. Fortunately, many of your concerns are already addressed by current law including Colorado statutes, existing and pending Executive Orders, and the Federal CARES Act. We have outlined our conclusions in more detail below.

First, the Governor is already taking steps to relax law and regulation with respect to healthcare providers. In Executive Order D 2020 038 the Governor allowed licensed healthcare professionals, including advanced practice nurses, certified registered nurse anesthetists, nurses, physicians, physician assistants, and respiratory therapists to train, supervise, and delegate responsibilities to medical professionals in a number of fields, as long as such delegated responsibilities are appropriate. House Bill 19-1010 also gave additional flexibility to EMS providers with respect to the locations where they may practice.

Second, while we understand your concerns, the Governor does not have the authority to legislate through an Executive Order. Any order that attempts to create new law providing immunity would at best be questioned by a court, and at worst do a disservice to the people who believed that they were protected.

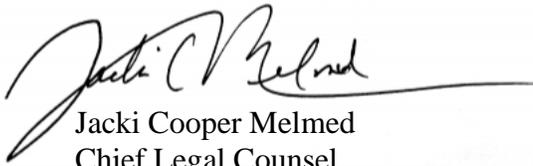
However, the Governor has provided immunity in ways consistent with Colorado law, and there are already current statutory provision and federal law that create additional protections. On April 8, 2020, the Governor signed Executive Order D 2020 032 which adopted the Crisis Standards of Care plan recommended by the Expert Emergency Epidemic Response Committee. Healthcare providers who follow the standards do have protections under current law and this protection is not limited to volunteers. Under § 24-33.5-711.5(2) "Such persons and entities that in good faith comply completely with board of health rules regarding the emergency epidemic and with executive orders regarding the disaster emergency shall be immune from civil or criminal liability for any action taken to comply with the executive order or rule." (Emphasis added.) We believe that these actions offer robust protections fully within the Governor's authority. In the event the GEEERC needs to activate additional standards of care, those will also be adopted by Executive Order.

Also, under the Colorado Governmental Immunity Act, § 24-10-103(4)(a), volunteers who assist a state or local agency and act under the direction the agency are not personally liable, unless the acts causing an injury are willful or wanton. Volunteers for state and local public health agencies

have protections under current law. While this does not cover all healthcare workers, it is a meaningful piece of legislation that currently shield volunteers. Additionally, the Federal CARES Act enacts immunity for health care professionals who are volunteering services in response to a public health emergency. This Act mirrors the Colorado Governmental Immunity but limits the immunity to harms that arise from treatment of COVID-19 patients.

Finally, the General Assembly also retains the authority to pass legislation that addresses some of the issues identified by stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacki Cooper Melmed", with a long horizontal flourish extending to the right.

Jacki Cooper Melmed
Chief Legal Counsel

A handwritten signature in black ink, appearing to read "David Oppenheim", with a circular flourish.

David Oppenheim
Legislative Director

A handwritten signature in black ink, appearing to read "Elisabeth Arenales", with a long horizontal flourish extending to the right.

Elisabeth Arenales
Senior Policy Advisor on Health Care