



April 28, 2020

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Dear Chairman Mendelson,

We want to thank the Council for the legislative efforts made thus far in protecting health care providers against civil liability during the COVID-19 pandemic. These were important first steps, but as other jurisdictions have recognized, the damage and death this disease is causing should be justification for additional protections. We are asking the Council of the District of Columbia to take similar actions immediately to protect the health care workers and facilities dutifully serving the residents of the District.

Our members and their employees are on the front lines of this battle, and they are doing everything in their power to protect the safety of staff and their patients. This insidious disease has forced every health care provider and facility to adapt their operations and practices to meet the needs of the residents of the District of Columbia as well as the region. Changes implemented so far have included the cessation of non-essential surgeries, greater use of telemedicine, restrictions on visitors, staff screenings, and the implementation of our emergency operation plans to surge the health system to meet the medical needs of the community.

Hospitals, skilled nursing facilities, assisted living facilities, clinics, and physician offices have implemented policies and procedures consistent with CDC and DC Health recommendations to protect their patients and staff from COVID-19. Many of our members have secured additional staff through agencies and volunteers. Additionally, our members are securing as much personal protective equipment as they can through normal and new supply lines to meet demand. This is on top of conservation efforts that have been implemented due to global supply chain limitations.

The health care providers in the District are taking care of all those in need as they themselves are experiencing tremendous financial costs due to the emergency. Our members need additional liability protections to guard them against unjustified tort claims during a time when they are already struggling. As you are aware, the District has not adopted caps on torts, and this creates a frightening environment for providers, especially since advertising has already started in relation to seeking cases against facilities and providers.

We are asking the Council to adopt the following provisions during the COVID-19 emergency:

1. Expanded definition of health care provider in D.C. Official Code § 7-2301(1B)) to include all paraprofessional, licensed, certified or registered health care workers, as well as, include skilled nursing facilities, assisted living facilities and licensed/certified behavioral health care entities and other authorized providers and their employees.
2. Expanded definition of health care provider in D.C. Official Code § 7-2301(1B)) to include protections for employers of health care workers and health care facilities, as well as their administrators, executive, supervisor, board members, and trustees.
3. Expanded definition of health care provider in D.C. Official Code § 7-2301(1B)) to include any health care or senior residential facility or other facility or organization licensed, registered, or otherwise engaged in the provision of health care, personal care, assisted living services, or residential care licensed in the District.
4. Provide additional protections against administrative and criminal liability for providers.
5. Define gross negligence to exclude:
 - a. Actions taken to preserve supplies of personal protective equipment;
 - b. Cancellation or postponement of all non-urgent procedures, surgeries, and Office visits;
 - c. Rendering health care services to any patient, regardless of whether or not the patient is seeking examination or treatment for signs or symptoms of a respiratory illness or suspected, presently under investigation, or confirmed COVID-19, and regardless of the location in which such services were performed;
 - d. Acts, omissions, or decisions resulting from resource or staffing shortages.

We believe these provisions are reasonable amendments to the liability protections already existing in the DC Code. We are happy to discuss them further with you and other Councilmembers. Our legislative recommendations are attached.

Sincerely,

Jacqueline D. Bowens
President and CEO
District of Columbia Hospital Association

Tamara Smith
President & CEO
District of Columbia Primary Care Association

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