

# COVID-19 Update: Governor Issues Liability Protections for Healthcare Workers



**Megan Hargraves**  
mhargraves@mwlaw.com  
(501) 688.8871



**Benjamin Jackson**  
bjackson@mwlaw.com  
(501) 688.8887

04/20/2020

On April 14, 2020, Governor Asa Hutchinson issued [Executive Order 20-18](#). Among other things, this EO provided immunity for healthcare workers from liability in order to equip these professionals with the tools necessary to combat the COVID-19 emergency.

The Governor specifically ordered as follows:

1. The Arkansas Code is suspended to the extent necessary to remove limits on working hours for physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses. The Governor emphasized that the purpose of the suspension was to allow healthcare facilities to maintain adequate staffing. Read our hospital staffing disruption [updates](#) on Centers for Disease Control guidance for health care professionals.
2. The Governor authorized and requested emergency responders as defined in the Arkansas Emergency Services Act—virtually any personnel with special skills, qualifications, training, knowledge, or experience that would be beneficial to combatting COVID-19—to provide medical and health care, assistance, and advise in response to the pandemic to the extent they are legally permitted and under directives and orders of the Secretary of the Arkansas Department of Health.
3. The Arkansas Code is suspended to the extent necessary to allow the development or modification of emergency medical treatment protocol. Such development or modification must be approved by the Secretary of the Arkansas Department of Health and may include:
  - Triage, diagnostic testing, and/or treatment to patients with known or suspected COVID-19;
  - Services provided in response to personnel shortages caused by COVID-19;
  - Cancelling, postponing or denying elective surgeries or procedures or other routine care;
  - Redeploying or cross training staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 outbreak;
  - Planning to or enacting crisis standard of care measures, such as modifying numbers of beds, preserving personal protective equipment, and triaging access to services or equipment; and
  - Reducing recordkeeping requirements to the extent necessary for health care providers and facilities to perform tasks as may be necessary to respond to the COVID-19 outbreak.
4. Governor Hutchison has also provided immunity from liability to physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses for any act or omission alleged to be the cause of any injury or death sustained as a result of an act or omission by such medical professionals in the course of providing medical services in support of the State's

response to the COVID-19 outbreak or the implementation of measures to control the Causes of the COVID-19 epidemic.

5. The order further provides that liability for healthcare workers applies to those working outside of his or her normal scope of practice only if their institution redeploys them to meet the state's need of increased COVID-19 cases. Further, the order does not give a blanket protection as medical professionals acting in gross negligence, with willful misconduct, or in bad faith can still be held liable.

On April 17, 2020, the Secretary of Health, Dr. Nathaniel Smith, issued a [Directive](#) associated with EO 20-18. Sections 2 and 3 of EO 2-19 required action by the Secretary of Health to be initiated and implemented. In the Directive, Secretary Smith expressly acted as contemplated by EO 20-18.