

GOVERNMENT RELATIONS—UPDATE May 2020

REDUCING THE THREAT OF LIABILITY FOR OUR PROVIDERS AND FACILITIES AS THEY FIGHT COVID-19

Physicians Insurance has been engaged in a wide range of government-relations activity concerning healthcare providers and facilities during the coronavirus outbreak at both the federal and state level. We are working with our national and strategic partners in states where we do business to reduce the threat of liability for healthcare providers and facilities who are leading the fight against COVID-19.

AREAS OF LIABILITY CONCERN

Liability concerns include, but are not limited to:

- **Physicians and other healthcare professionals**, to meet increasing demand, are being asked to provide treatments or care outside their general practice areas, and for which they may not be familiar.
- **Healthcare professionals and facilities** have inadequate safety equipment that could result in the transmission of the virus from patient to provider and then to additional patients, or directly from one patient to another.
- **Healthcare facilities facing shortages of equipment** such as ventilators are being forced to ration care, resulting in patients not receiving the care they need.
- **Elective surgeries and procedures** are being delayed for months to provide additional capacity to treat COVID-19 patients.
- **Inadequate or delayed COVID-19 testing** is leading to flawed and/or delayed diagnosis.
- **Non-COVID-19 patients with other healthcare issues** are having to wait for substantial periods of time to receive treatment, resulting in the delay of treatment and a reduced chance of positive healthcare outcomes.
- **Concerns have been raised relating to telemedicine and/or patients being released from hospitals early** to free up beds for COVID-19 patients, reducing patient safety and quality healthcare measures.

FEDERAL MPL AND HPL PROTECTIONS

To date, federal efforts have fallen short of what is truly needed to reduce the threat of liability for all healthcare providers and facilities engaged in fighting the national COVID-19 pandemic.

On March 20, 2020, President Trump signed into law H.R. 748: Coronavirus Aid, Relief, and Economics Security Act (CARES Act), which extends liability protections to volunteer healthcare professionals during national declared emergencies or disasters. The Good Samaritan provisions in Section 3215 provide immunity for healthcare given by a volunteer in good faith and within the scope of the volunteer's licensure—but they do not include protections for facilities. We are working with our national partners to promote necessary amendments that would include Crisis Standard of Care language to provide additional protections for healthcare facilities.

Congress has shifted its focus from healthcare provider and facility liability to employer liability. The conversations surrounding the fourth coronavirus-relief package promote employer liability protection—as the nation determines how to safely reopen for business—along with healthcare provider and facility protections. Working with our partners, the MPL Association and the Health

Coalition on Liability and Access, we have drafted federal language to extend the provider liability protections in the CARES Act beyond volunteers to all healthcare providers. The draft language is similar to the bipartisan-approved language in the first stimulus package. We are working to secure broad bipartisan support, including support from Congresswoman Dr. Schrier from Washington, who signed on early to the Good Samaritan language in the CARES Act. We hope to insert both healthcare provider and facility liability language and employer liability language in the next coronavirus-relief package. More importantly, we hope to educate Congress on the immediate need for national reforms to protect against future pandemics and national disasters.

WASHINGTON AND OREGON MPL AND HPL PROTECTIONS

We are working with the Washington and Oregon State Medical Associations, hospital associations, and liability-reform coalitions to make requests to both governors to protect healthcare providers and facilities if Congress fails to implement adequate protections during this national and state-declared emergency.

WASHINGTON EXECUTIVE-ORDER REQUEST

On April 2, 2020, a letter was sent to Governor Inslee on behalf of the healthcare community, requesting that he extend the Uniform Emergency Volunteer Health Practitioners Act to Washington practitioners. Current state law favors out-of-state workers over Washington practitioners, so the letter calls on the governor to provide the same protections to Washington providers as are provided for workers who arrive from other states.

On April 23, 2020, the governor responded unfavorably to the request, stating that he does not believe the current circumstances or projections represent an immediate need for liability waivers. The governor has expressed interest in tracking COVID-19 claims data for further consideration; however, he is not convinced that blanket immunity is the answer. We will continue to work with the governor and share appropriate COVID-19 claims data with all members of the Legislature in preparation for 2021 legislative-session opportunities.

OREGON EXECUTIVE-ORDER REQUEST

On April 3, 2020, a letter was sent to Governor Brown on behalf of the healthcare and facility community, requesting that the governor follow the New York gubernatorial executive order that limited liability for healthcare providers and facilities.

Like Governor Inslee, Governor Brown has expressed interest in tracking COVID-19 claims data before making any decisions on blanket immunity for healthcare providers and facilities. We have been told she has a plan ready to activate if a professional or facility liability crisis should occur. We have engaged in a robust grassroots campaign in Oregon and will share appropriate information with all members of the Legislature in preparation for 2021 legislation-session opportunities.

CALIFORNIA NON-ECONOMIC-DAMAGE CAP

We received good news out of California on the challenge to the non-economic-damage cap. The campaign behind the ballot initiative to increase the California medical non-economic-damages cap has decided to aim for the 2022 ballot, due to the pandemic. The \$250,000 non-economic-damage cap was



put in place in 1975; the 2020 ballot measure, if passed, would have adjusted the non-economic-damage cap for inflation, increasing the cap to \$1.2 million for 2021. Proponents for the ballot initiative could not get enough signatures to qualify amid the COVID-19 pandemic. In addition, they recognized that the environment is not favorable for overturning the cap and attacking healthcare providers and facilities currently battling the pandemic.

As a legislator once said, “Politics is the art of postponing decisions until they are no longer relevant.” Physicians Insurance will continue to serve as a trusted, reliable resource of information for our insureds and lawmakers. Advocacy is crucial to ensuring that the concerns of our members and their patients are heard by lawmakers at both the state and national level, and we are well positioned to work as a leading advocate on initiatives that impact healthcare now and for the 2021 session and the next Congress.

MORE INFORMATION

For more information about our Government Relations Program, please contact Anne E. Bryant, Senior Director of Government Relations, at Anne@phyins.com or 206-343-7300, extension 6612. You can also visit our webpage at phyins.com/govt.