STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

FILED
INDEX DEPARTMENT
MAY 13 2020
IN THE OFFICE OF
SECRETARY OF STATE

May 13, 2020 Executive Order 2020-37

EXECUTIVE ORDER IN RESPONSE TO COVID-19
(COVID-19 EXECUTIVE ORDER NO. 35)

WHEREAS, Coronavirus Disease 2019 (COVID-19), a novel severe acute respiratory illness, has rapidly spread throughout Illinois in a short period of time, necessitating stringent guidance from federal, state, and local public health officials and significant measures to respond to the increasing public health disaster; and,

WHEREAS, COVID-19 spreads among people through respiratory transmissions and presents with symptoms similar to those of influenza; and,

WHEREAS, on March 9, 2020, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area (the First Gubernatorial Disaster Proclamation) in response to the outbreak of COVID-19; and,

WHEREAS, on April 1, 2020, I declared all counties in the State of Illinois as a disaster area (the Second Gubernatorial Disaster Proclamation) as a result of the exponential spread of COVID-19; and,

WHEREAS, on April 30, 2020, due to the expected continuing spread of COVID-19 and the resulting health impacts across the State, as well as the need to address the potential shortages of hospital beds, ICU beds, ventilators, personal protective equipment and materials for testing for the virus, I declared all counties in the State of Illinois as a disaster area (the Third Gubernatorial Disaster Proclamation, and, together with the First and Second Gubernatorial Disaster Proclamations, the Gubernatorial Disaster Proclamations); and,

WHEREAS, as the virus has spread through Illinois, the crisis facing the State has progressed and requires an evolving response to ensure hospitals, health care professionals, and first responders are able to meet the health care needs of all Illinoisans in a manner consistent with continually updated guidance from the Illinois Department of Public Health (IDPH) and the federal Centers for Disease Control and Prevention (CDC); and,

WHEREAS, ensuring the State of Illinois has adequate bed capacity, supplies, and providers to treat patients afflicted with COVID-19, as well as patients afflicted with other maladies, is of critical importance; and,

WHEREAS, eliminating obstacles or barriers to the provision of supplies and health care services is necessary to ensure the Illinois health care system has adequate capacity to provide care to all who need it; and,

WHEREAS, the Illinois Department of Financial and Professional Regulation and IDPH have taken measures, and continue to take measures, to enable inactive and out-of-state health care workers to work in Illinois through proclamations, emergency rules, and variances; and,

WHEREAS, IDPH has taken measures, and continues to take measures, to enable hospitals to increase bed capacity and provide levels of care necessary to respond to the COVID-19 outbreak; and,

WHEREAS, on March 16, 2020, IDPH issued guidance recommending cancelling all elective or non-emergent surgeries and procedures to immediately decompress the health care system during the COVID-19 response; and,

WHEREAS, IDPH issued revised guidance, effective May 11, 2020, that allows hospitals and ambulatory surgical treatment centers to resume elective surgeries and procedures provided that certain requirements are met relating to surveillance of epidemiologic trends, regional hospital utilization, the hospital's own capacity, case setting and prioritization, preoperative testing for COVID-19, personal protective equipment, infection control procedures, and availability of support services, as well as other requirements; and,

WHEREAS, resumption of elective surgeries and procedures is important to the continued health and safety of the people of the State of Illinois, while at the same time ensuring that Illinois hospitals maintain the ability to accommodate a renewed surge of COVID-19 patients if necessary; and,

WHEREAS, in order to ensure that COVID-19 patients receive proper medical care, it is essential that hospitals and other types of health care facilities accept transfers of COVID-19 patients if they have the capacity and capability necessary to provide treatment for COVID-19 patients; and,

WHEREAS, IDPH has taken measures, and continues to take measures, to enable emergency medical systems to accommodate and prepare for transportation and care of COVID-19 patients; and,

WHEREAS, on April 9, 2020, IDPH issued guidelines requesting emergency medical services systems prepare for transportation of patients to non-traditional destinations, such as alternate care facilities; and,

WHEREAS, Section 6(c)(1) of the Illinois Emergency Management Agency Act (IEMA Act), 20 ILCS 3305/6, provides that the Governor is authorized to "make, amend, and rescind all lawful necessary orders, rules, and regulations to carry out the provisions of this Act within the limits of the authority conferred upon the Governor"; and,

WHEREAS, Section 15 of the IEMA Act, 20 ILCS 3305/15, provides that "Neither the State, any political subdivision of the State, nor, except in cases of gross negligence or willful misconduct, the Governor, the Director, the Principal Executive Officer of a political subdivision, or the agents, employees, or representatives of any of them, engaged in any emergency management response or recovery activities, while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act is liable for the death of or any injury to persons, or damage to property, as a result of such activity"; and,

WHEREAS, Section 21(b) of the IEMA Act, 20 ILCS 3305/21, provides that "Any private person, firm or corporation and employees and agents of such person, firm or corporation in the performance of a contract with, and under the direction of, the State, or any political subdivision of the State under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct"; and,

WHEREAS, Section 21(c) of the IEMA Act, 20 ILCS 3305/21, provides that "Any private person, firm or corporation, and any employee or agent of such person, firm or corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct"; and,

WHEREAS, Section 3.150(a) of the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50/3.150, provides that persons "who in good faith provide[] emergency or non-emergency medical services during a Department [of Public Health] approved training course, in the normal course of conducting their duties, or in an emergency, shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions, including the bypassing of nearby hospitals or medical facilities in accordance with the protocols developed pursuant to this Act, constitute willful and wanton misconduct"; and,

FILED
INDEX DEPARTMENT
MAY 13 2020
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WHEREAS, the Good Samaritan Act, 745 ILCS 49, provides that "the generous and compassionate acts of its citizens," specifically health care professionals, "who volunteer their time and talents to help others" should be exempt from civil liability unless such acts demonstrate willful or wanton misconduct; and,

WHEREAS, for the preservation of public health and safety throughout the entire State of Illinois, and to ensure that our health care delivery system is capable of serving those who are sick, I find it necessary to take additional measures consistent with public health guidance;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(2), 7(3), 7(12), 15, and 21 of the IEMA Act, 20 ILCS 3305, for the duration of the Gubernatorial Disaster Proclamations, I hereby order the following:

Section 1. For purposes of this Executive Order, the following terms are defined as set forth below:

(a) "Hospitals" means facilities licensed or approved by the Hospital Licensing Act, 210 ILCS 85, or the University of Illinois Hospital Act, 110 ILCS 330.

(b) "Health Care Facilities" means:

i. Facilities licensed, certified, or approved by any State agency and covered by the following: 77 Ill. Adm. Code 1130.215(a), (c)-(f); Alternative Health Care Delivery Act, 210 ILCS 3/35(2)-(4); Emergency Medical Services (EMS) Systems Act, 210 ILCS 50; or Department of Veterans' Affairs Act, 20 ILCS 2805;

ii. State-operated Developmental Centers certified by the federal Centers for Medicare and Medicaid Services and licensed State-operated Mental Health Centers created pursuant to the Mental Health and Developmental Disabilities Administrative Act, 20 ILCS 1705/4;

iii. Licensed community-integrated living arrangements as defined by the Community-Integrated Living Arrangements Licensure and Certification Act, 210 ILCS 135/2;

iv. Licensed Community Mental Health Centers as defined in the Community Services Act, 405 ILCS 30;

v. Federally qualified health centers under the Social Security Act, 42 U.S.C. § 1396d(l)(2)(B);

vi. Alternate Care Facilities licensed by IDPH;

vii. Supportive living facilities certified by the Illinois Department of Healthcare and Family Services pursuant to the Illinois Public Aid Code, 305 ILCS 5/5-5.01(a); and,

viii. Assisted living establishments and shared housing establishments licensed by IDPH pursuant to the Assisted Living and Shared Housing Act, 210 ILCS 9.

"Health Care Facility" is the singular form of the plural "Health Care Facilities."

FILED
INDEX DEPARTMENT
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(c) "Health Care Professional" means all licensed or certified health care workers or emergency medical services personnel who (i) are providing health care services at a Hospital or Health Care Facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of the Illinois Emergency Management Agency (IEMA) or IDPH in response to the Gubernatorial Disaster Proclamations.

(d) "Health Care Volunteer" means all volunteers or medical or nursing students who do not have licensure who (i) are providing services, assistance, or support at a Hospital or Health Care Facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of IEMA or IDPH in response to the Gubernatorial Disaster Proclamations.

Section 2. Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c) and the Good Samaritan Act, 745 ILCS 49, I direct all Hospitals, Health Care Facilities,

Health Care Professionals, and Health Care Volunteers to render assistance in support of the State's response to the disaster recognized by the Gubernatorial Disaster Proclamations (COVID-19 outbreak).

(a) Hospitals and Health Care Facilities.

i. For Hospitals and Health Care Facilities, "rendering assistance" in support of the State's response must include measures such as increasing the number of beds, preserving and properly employing personal protective equipment, conducting widespread testing, and taking necessary steps to provide medical care to patients with COVID-19 and to prevent further transmission of COVID-19.

ii. For Hospitals conducting elective surgeries or procedures, "rendering assistance" in support of the State's response must also include compliance with IDPH's current guidance on conducting elective surgeries and procedures.

iii. For Hospitals, "rendering assistance" must also include accepting a transfer of a COVID-19 patient from another Hospital, including Hospital inpatients, and from State-operated entities (collectively, "transferring entities") that do not have the capacity and capability necessary to provide treatment for a COVID-19 patient. The receiving Hospital shall accept such transfer of a COVID-19 patient if it has sufficient capacity and capability necessary to provide treatment for the COVID-19 patient. In determining whether a Hospital has sufficient capacity and capability necessary to provide treatment for a COVID-19 patient, the Hospital shall consider, at a minimum, its ability to provide safe and effective treatment consistent with any current guidance from IDPH and available supplies, staffing, and ICU and medical/surgical bed capacity.

FILED
INDEX DEPARTMENT
MAY 13 2020
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iv. For Health Care Facilities, "rendering assistance" must also include, consistent with current guidance and recommendations from IDPH (1) conducting widespread testing of residents and widespread and regular testing of staff for COVID-19, and (2) accepting COVID-19 patients upon transfer or discharge from a Hospital or Health Care Facility.

(b) For Health Care Professionals, "rendering assistance" in support of the State's response means providing health care services at a Hospital or Health Care Facility in response to the COVID-19 outbreak, or working under the direction of IEMA or IDPH in response to the Gubernatorial Disaster Proclamations.

(c) For Health Care Volunteers, "rendering assistance" in support of the State's response means providing services, assistance, or support at a Hospital or Health Care Facility in response to the COVID-19 outbreak, or working under the direction of IEMA or IDPH in response to the Gubernatorial Disaster Proclamations.

Section 3. Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamations, Hospitals that continue to cancel or postpone all elective surgeries or procedures in order to respond to the COVID-19 outbreak, or Health Care Professionals providing service in such a Hospital, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Hospital or Health Care Professional, which injury or death occurred at a time when a Hospital or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH. This section is inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct of such Hospital or Health Care Professional, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

Section 4. Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamations, Hospitals that conduct elective surgeries or procedures beginning on or after May 11, 2020, or Health Care

Professionals providing services in such a Hospital, shall be immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the Hospital or the Health Care Professional, which injury or death occurred at a time when a Hospital or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH. This section is inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct of such Hospital or Health Care Professional, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

Section 5. Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamations, Health Care Facilities or Health Care Professionals providing services in a Health Care Facility, shall be immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the Health Care Facility or the Health Care Professional, which injury or death occurred at a time when a Health Care Facility or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH. This section is inapplicable if it is established that such injury or death was caused by gross negligence or willful misconduct of such Health Care Facility or Health Care Professional, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable.

Section 6. Pursuant to Section 21(c) of the IEMA Act, 20 ILCS 3305/21(c), and the Good Samaritan Act, 745 ILCS 49, I direct that during the pendency of the Gubernatorial Disaster Proclamations, any Health Care Volunteer, as defined in Section 1 of this Executive Order, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by such Health Care Volunteer, which injury or death occurred at a time when the Health Care Volunteer was rendering assistance to the State in response to the COVID-19 outbreak by providing services, assistance, or support consistent with current guidance issued by IDPH. This section is inapplicable if it is established that such injury or death was caused by willful misconduct of such Health Care Volunteer.

Section 7. Nothing in this Executive Order shall be construed to preempt or limit any applicable immunity from civil liability available to any Hospital, Health Care Facility, Health Care Professional, or Health Care Volunteer.

Section 8. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

JB Pritzker, Governor

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