



California Association of Long Term Care Medicine
Promoting quality patient care through medical leadership and education

May 5, 2020

Governor Gavin Newsom
State of California
State Capitol
Sacramento, CA 95814

Re: **Request for Executive Order Related to Liability Protection**

Dear Governor Newsom:

The California Association of Long-Term Care Medicine (CALTCM) is the professional medical society representing California's skilled nursing facility medical directors, physicians, nurse practitioners, physician assistants, and other health care professionals providing care in nursing homes, assisted living communities, and other post-acute and long-term care environments. As you know, the COVID-19 pandemic has wrought havoc on these care settings and those who reside and work there. CALTCM's primary mission is to promote quality patient care across the long-term care continuum through medical leadership and education, and this pandemic is giving us ample opportunity to focus on quality.

We are writing to urge you to proceed with granting an order that expands liability protection beyond that already afforded to physicians and hospitals, with respect to negligence claims arising out of the COVID-19 pandemic, to skilled nursing facilities, assisted living communities, other congregate living facilities, and all other health care professionals not explicitly already immune. It is probable that there will be countless lawsuits related to deaths and other bad outcomes related to COVID-19, and it should be realized that these are unprecedented times, requiring providers to take unusual measures to continue to provide the best care possible under the circumstances of this disaster. To be clear, we do not seek an order granting immunity for willful misconduct; we merely request that ordinary negligence causes of action arising out of the circumstances, including unavoidable shortages of equipment and staff, created by COVID-19 in our care settings be excluded from litigation.

In creating protocols for management or scarce resources, the state must keep in mind that this may place providers in very difficult situations. Our providers deserve assurance that they will not be held accountable to usual care decisions and provision when they are abiding by the guidance promulgated by the California Department of Public Health, other local health departments, or other authorities during this pandemic. The actual, boots-on-the-ground, frontline care and treatment we are giving today cannot be reasonably expected to be exactly what it is during ordinary, day-to-day, non-pandemic circumstances.

As stated in a recent coalition letter of April 9, 2020 to your office from the California Medical Association, the California Hospital Association, the California Association of Health Facilities and other organizations, "In this time of crisis, care providers must be able to observe, evaluate, and respond to rapidly-changing conditions and events; the prospect of being subjected to future lawsuits would burden and slow these decisions, threatening greater loss of life throughout California. Basic ethical principles governing crisis triage decisions include accountability—not only for health care providers called upon to make such decisions, but also for the government in supporting the processes to make these decisions and protecting the providers who make them." We at CALTCM agree that support must be given to our providers to make appropriate decisions under these difficult circumstances without fear of excessive legal action, providing

their conduct does not constitute willful misconduct. Liability insurance carriers have already more than doubled premiums for some providers in anticipation of the surge of claims they are expecting, and this may pose a very real threat to the very existence of some organizations. It will not serve Californians well if providers wind up having to fold, leaving a huge population of indigent elders with no reasonable place to receive care.

We echo the conclusion made by our fellow stakeholder organizations: *This request is made with the deep understanding that every care provider is doing all they can to protect all Californians during this unprecedented crisis.* Please do not let the optics of issuing such an order—with the notion that somehow this is giving bad operators carte blanche to provide poor care—prevent you from doing the right thing on behalf of both our providers and, ultimately, the frail elders we care for. Make the language clear that deliberate wrongdoing and associated practices will not be granted immunity, and join the multiple other progressive and reasonable jurisdictions where this immunity has already been granted beyond the confines of physicians and hospitals. You are well aware of the importance of the skilled nursing facility care setting to California's elders, and unprecedented times call for unprecedented action.

On behalf of the CALTCM Board of Directors, we appreciate your consideration and if you would like to discuss further, please contact me. As experts in geriatrics and long term care medicine we continue to stand at the ready to provide guidance to your administration as you develop policies that impact vulnerable older adults. Thank you for your efforts in support of quality care in the long-term care arena.

Sincerely yours,



Michael Wasserman, MD, CMD
President, CALTCM