

ACP Statement to Chapters about Liability Protections During the COVID-19 Pandemic

Approved by the Executive Committee of the Board of Regents on behalf of the Board of Regents on April 6, 2020

Background

Some state medical societies and others are making statements asking for increased liability protections for physicians during the current public health emergency. ACP Governors contemplating writing statements, or signing onto the statements of others, should be aware that some statements may be overly broad or potentially conflict with ACP policy, including on Non-Discrimination in the Stewardship and Allocation of Resources During Health System Catastrophes Including COVID-19

<https://www.acponline.org/acp-newsroom/internists-say-prioritization-allocation-of-resources-must-not-result-in-discrimination>.

AMA offers background on this topic at <https://www.ama-assn.org/delivering-care/public-health/liability-protections-health-care-professionals-during-covid-19> including explaining how laws already on the books provide protections for physicians, including volunteer physicians, during a health emergency of this type. There are also new legal provisions in recent executive orders Governors in various states that address liability protection and issues such as allowing physicians licensed in good standing to practice across state lines, modifications to scope of practice laws, temporarily allowing states to mobilize inactive physicians into the workforce, expedited credentialing of physicians coming out of retirement or moving from inactive status, and providing volunteer physicians who are not otherwise covered by the workers' compensation laws of the state to make a claim under the state's workers' compensation system.

ACP Position

Current law in some states may provide sufficient liability protections for crisis and emergency care; but if chapters believe those protections are insufficient in the current circumstance, it is appropriate for chapters to support additional protections, provided that:

- The crisis standard of care plans do not include triage and allocation protocols that discriminate against classes or categories of patients and conflict with ACP policy (see link above)
- In solidarity with our patients, chapters do not advocate for such broad protection that would include immunity from, for example, criminal or reckless misconduct, gross negligence, or intentional infliction of harm.

For Chapters

Although we cannot provide legal advice or review specific state bills or letters to expand liability protections, chapters should follow the above guidance from ACP national in making decisions on supporting additional protections and must not take positions that are contrary to ACP policy including on non-discrimination. If you have policy questions or comments about the ethics and non-discrimination issues, please feel free to contact Lois Snyder Sulmasy, JD at lsnyder@acponline.org.