

# COVID-19 PANDEMIC: MPL EXPOSURES AND LIABILITY PROTECTIONS

May 11, 2021

# Possible MPL Exposures by Class

## Physicians:

- Failure to diagnose COVID-19.
- Delay or denial of deemed “elective” or “non-essential” care to patients that is later asserted to be critical in the course of treatment.
- Alleged negligence whereby patients and family members are infected with COVID-19 by “community spread” in a clinic or office setting.
- Alleged negligent mistreatment of COVID-19 (e.g., overutilization of ventilators in patient protocols).

## Hospitals:

- Delay or denial of care due to lack of facility capacity (e.g., bed shortages) or access to medical equipment (ventilators, PPE etc.) caused by patient overload.
- Asserted negligence in “community spread” of COVID-19 in sensitive areas, such as ICU, cardiology, surgery, oncology, etc.

## Nursing Homes/Long Term Care/Senior Living Facilities:

- Several nursing home centers have experienced dramatic “community spread” of COVID-19 to elderly patients, with dire results.

# Liability Protections for Health Care Professionals

Both the federal and state governments have been proactive by enabling or expanding legislation to ensure our healthcare professionals may deliver care during the pandemic while reducing some of their exposure to MPL claims.

Even the plaintiff's bar admits they will face some significant hurdles in holding healthcare professionals responsible for COVID-19 deaths or injuries due to the fact that most of the populace is extremely grateful for the bravery and diligence of the providers in continuing to provide care without regard for their own personal safety.

In fact, arguably most of the populace view COVID-19 healthcare providers as "heroes." We believe this public sympathy, coupled with the various federal and state immunities, should serve to mitigate the exposure of MPL insurers to COVID-19 losses.

# Liability Protections for Health Care Professionals

## Federal Protections for Healthcare Professionals

**CARES (Coronavirus Aid, Relief, and Economic Security) Act.** This newly enacted law includes Good Samaritan verbiage that affords additional federal liability protections for volunteer healthcare professionals during the COVID-19 Emergency Response.

**PREP (Public Readiness and Emergency Procedures) Act.** This recent declaration by HHS provides broad immunity protections to healthcare professionals who administer or use countermeasures such as antiviral medications, other drugs, biologics, vaccines, diagnostics or devices (e.g., COVID-19 testing and respiratory therapy) to treat, diagnose, cure, prevent or mitigate COVID-19 or a similar virus mutating therefrom.

**The Volunteer Protection Act of 1997.** The VPA provides liability protections to volunteers, including physicians, who are performing services for nonprofit organizations or government entities.

**HIPAA (Health Insurance Portability and Accountability Act).** This 1996 legislation extends Federal Tort Claims Act liability protections to volunteer health professionals at qualifying free clinics, provided that the clinic sponsors the physician by submitting an application to the Health Resources and Services Organization.

# Liability Protections for Health Care Professionals

## State Protections for Healthcare Professionals

**Good Samaritan Statutes.** All states have enacted liability protections that apply to physicians providing care in a healthcare emergency.

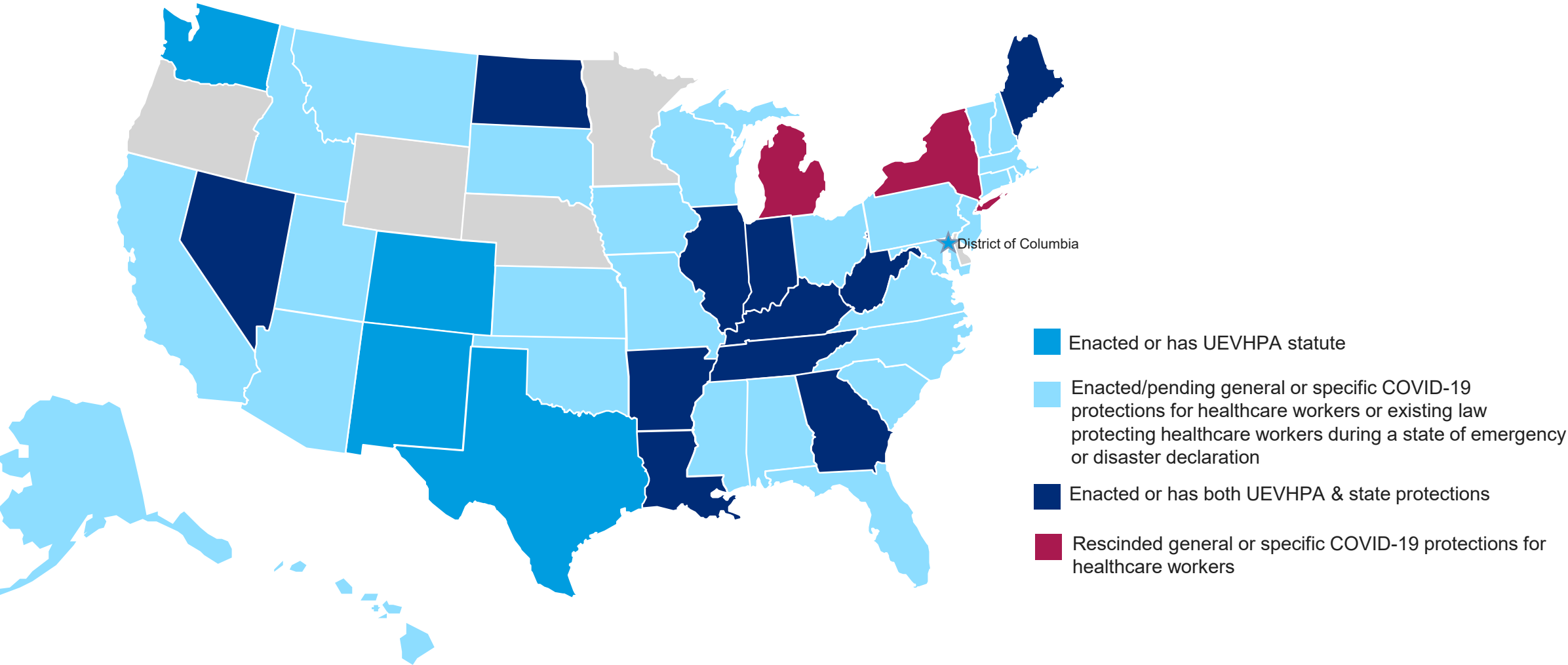
**EMAC (Emergency Management Assistance Compact).** All states have adopted this model legislation that includes liability protections for healthcare volunteers responding to a declared emergency. Please note that these protections are not automatic and may be limited in their applicability. It is important to check with the law of the individual state if questions arise.

**UEVHPA (Uniform Emergency Volunteer Health Practitioners Act).** This statute grants immunity of civil liability to out-of-state licensed healthcare professionals for gratuitous care afforded in a declared emergency, provided they register in advance or during an emergency. This legislation has been enacted in 17 states, D.C., and the U.S. Virgin Islands (AR, CO, GA, IL, IN, KY, LA, ME, NV, NM, ND, OK, TN, UT, WA, WV).

**Specific COVID-19 State Immunities.** Several states have issued executive orders amending legislation or currently have legislation to provide broad civil immunity to healthcare professionals for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services.

# Liability Protections for Health Care Professionals

## State Protections for Healthcare Professionals



This is an excerpt from our full report. For more information, please reach out to a member of the MPL Segment team



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