6 reasons why COVID-19 medical liability shield critics are wrong

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Opposition has emerged to a bipartisan bill before Congress that would provide targeted and limited liability protections to physicians and other health care professionals delivering care during the COVID-19 pandemic. Arguments being used against the legislation, however, are easily rebutted.

The Coronavirus Provider Protection Act, H.R. 7059, was introduced in the House by Tennessee Republican Phil Roe, MD, and California Democrat Lou Correa and it has the support of nine co-sponsors (five Republican, four Democrats), the AMA and more than 130 national, state and medical specialty organizations.

“Physicians and other health care professionals are putting themselves at risk every day while facing shortages of medical supplies and safety equipment, as well as changing directives and guidance from all levels of government,” then-AMA President Patrice A. Harris, MD, MA, said back in June. “We commend Reps. Roe and Correa for recognizing that reasonable liability protections are in the best interest of our country as we continue to combat COVID-19 and begin to recover from this pandemic.”

Physicians and other professionals remain vulnerable to the threat of unwarranted and unfair lawsuits as they continue heroic efforts to treat individuals afflicted with COVID-19 while also meeting the needs of other non-COVID-19 patients and addressing the full-time task of securing adequate medical supplies and personal protective equipment (PPE).

“During this unprecedented national health emergency, physicians and other health care professionals have been putting themselves at risk every day while facing shortages of medical supplies and safety equipment, and making critical medical decisions based on changing directives and guidance,” said the AMA and more than 130 health care organizations in a letter to Congressional leaders.
Find out why physicians need COVID-19-related medical liability protections.

A coalition organized by the trial lawyer community is opposing the bill. Their arguments, however, exaggerate the reach and intent of the bill. These arguments were countered by the Health Coalition on Liability and Access (HCLA), which was founded in 1993 and includes the AMA as a member organization.

The HCLA rebuttal to H.R. 7059 opponents includes these arguments:

**H.R. 7059 provides limited and targeted protection.** Opponents claim the bill would provide complete immunity from claims of negligence, but this is not true. Exempted from protection are acts or omissions that constitute “willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety” of a patient. In addition, the legislation only applies during the current COVID-19 public health emergency plus an additional 60-days after its expiration.

**H.R. 7059 does not provide immunity to health insurance companies.** While the bill applies to health care entities with which health professionals have a “professional affiliation,” the HCLA notes that “a clear reading of the bill” demonstrates that the measure is intended to apply to facilities where health care is provided.

**H.R. 7059 does not protect physicians who perform procedures outside the scope of their license.** It is explicitly stated in the bill that its protections apply to services that are “within the scope of the license, registration, or certification of the health care professional, as defined by the state of licensure, registration, or certification.” The bill would not protect services that “exceed the scope of license, registration, or certification of a substantially similar health care professional in the state in which such act or omission occurs.”

**H.R. 7059 does not duplicate protections already provided by existing law.** The Public Readiness and Emergency Preparedness (PREP) Act, enacted in 2005, applies to countermeasures developed for specific emergencies and would not apply to “basic” countermeasures such as the use of PPE.

Protections provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act apply only to volunteers, according to the HCLA rebuttal, thus the vast majority of health professionals are not currently afforded any liability protections.


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**H.R. 7059 will not jeopardize worker safety.** The bill’s protections are limited to suits related to patient care. Nothing in the bill exempts employers—including health care employers—who fail to maintain a safe working environment, states the HCLA rebuttal.

**H.R. 7059 is needed even though suits are currently rare.** “Medical liability suits are not like auto accidents,” the HCLA rebuttal states. “They are not filed immediately upon an incident occurring, sometimes taking years before they are filed.”

This point was also noted in the letter to Congress. “Physicians face the threat of costly and emotionally draining medical liability lawsuits due to circumstances that are beyond their control,” the letter states. “These lawsuits may come months or even years after the current ordeal is over.”

In addition, the HCLA’s FAQ document on the bill cites personal-injury attorney advertisements and “aggressive domain name marketing seeking solicitations for medical liability cases” as early indications of an impending “medical lawsuit wave.”

Several states have passed laws or issued executive orders to protect physicians and other health care professionals, but relying on state actions, which may contain multiple variations, makes “a comprehensive pandemic response unattainable,” the HCLA FAQ states, adding that “a national emergency needs a national solution.”

Read about the AMA’s COVID-19 advocacy efforts and track pandemic developments with the AMA’s COVID-19 resource center, which offers a library of the most up-to-date resources from JAMA Network™, the Centers for Disease Control and Prevention, and the World Health Organization.