

[Seal Office of the Governor]  
[Executive Order]

**NUMBER FIFTY-XXX (2020)**

**IMMUNITY FROM CIVIL LIABILITY FOR ACTIONS TAKEN IN RESPONSE  
TO  
NOVEL CORONAVIRUS (COVID-19)**

**Importance of the Issue**

The State Health Commissioner declared novel coronavirus (COVID-19) a disease of public health threat on February 7, 2020. On March 12, 2020, I issued Executive Order No. 51 declaring a state of emergency due to COVID-19 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the Code of Virginia.

On March 12, 2020, based on information from the Virginia Department of Health and the Centers for Disease Control and Prevention that the number of cases of COVID-19 continues to increase within the Commonwealth and that the number of persons who will need to be admitted to a hospital or nursing home for care within our communities may exceed the current capacity of our hospitals and nursing homes, I issued Executive Order No. 52 to authorize any general hospital or nursing home to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19.

On March 25, 2020 I, along with the Virginia State Health Commissioner, issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (“Order of Public Health Emergency Two”) prohibiting all inpatient and outpatient surgical hospitals licensed under 12 VAC 5-419, freestanding endoscopy centers, physicians’ offices, and dental, orthodontic, and endodontic offices in the Commonwealth from providing procedures and surgeries that require personal protective equipment (PPE), which if delayed are not anticipated to cause harm to the patient by negatively affecting the patient’s health outcomes, or leading to disability or death.

The Commonwealth of Virginia continues to respond to the COVID-19 pandemic. Despite these measures, COVID-19 presents an ongoing threat to the entire Commonwealth. Information from the Virginia Department of Health reveals occurrences of the virus in every region of the Commonwealth. The number of confirmed cases, hospitalizations, and persons under investigation (PUIs) in Virginia has increased substantially and as testing increases, it is highly likely that these numbers will continue to rise.

Hospitals and nursing homes across the Commonwealth are reporting large numbers of patients being admitted with COVID-19 symptoms, which is putting significant stress on these facilities because they were already dealing with a more severe seasonal influenza than usual.

Health care providers are already experiencing critical shortages of PPE and other supplies and in some cases are being required to reuse PPE where appropriate and possible to conserve PPE. Health care providers are not able to resupply these critical PPE resources due to severe disruptions in both the state, national, and international supply chains of PPE caused by the significant increased use of such equipment worldwide in response to COVID-19. Normally reliable sources of PPE and other critical supplies and equipment are not able to keep up with the increased demand and the limited supply. COVID-19 is not a disaster that is limited to one community or state; it is a World Health Organization-declared pandemic, which greatly complicates the response.

Transfer of patients with COVID-19 from hospitals to other sites of care such as assisted living facilities, hospice facilities and nursing homes is limited by the need to contain the spread of the virus. Additionally, the state and public and private health care providers are establishing alternate care sites to meet the anticipated surge. All of these measures are necessary in response to the public health emergency created by COVID-19; however, they present less than optimal conditions than those indicated by conventional standards of care, placing patients, the public, and health care workers at risk.

I find that COVID-19 cases could overwhelm health care providers in the Commonwealth and undermine their ability to deliver patient care in the traditional, normal, and customary manner or using the traditional, normal, and customary standards of care. Response to the COVID-19 disaster will require both public and private health care providers and other persons to deliver care using personnel, supplies, and equipment in ways that would not be undertaken in conventional practices. Examples could include the need to use a single ventilator for multiple patients at the same time, reuse of PPE, and withholding health care services in certain situations. Health care providers are already being called upon to engage in acts or omissions that are critical to the state's response to the unprecedented crisis related to the COVID-19 pandemic, but that may not have been contemplated by the legislature when it enacted existing statutory immunity provisions.

To ensure health care providers and other persons are fully enabled to provide the critical assistance and care needed by this state and its residents during this unprecedented emergency, it is reasonable and necessary to provide limited and temporary relief from certain restrictions and requirements governing the provision of medical services.

It is in the public interest to afford health care providers and other persons who are involved in the delivery of health care impacted by COVID-19 during this disaster with adequate protection against liability for good faith actions or omissions taken in their efforts to combat this health emergency.

### **Directive**

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia* and in furtherance of Executive Order No. 51, I order the following:

1. COVID-19 is a “communicable disease of public health threat” as defined in § 44-146.16 that constitutes a “disaster” as defined in § 44-146.16.
2. For purposes of Va. Code § 8.01-225.01, Executive Order No. 51 is a state emergency that has been declared and for purposes of Va. Code § 8.01-225.02, Executive Order No. 51 is a state emergency that has been declared in response to a disaster.
3. For purposes of this Executive Order, “health care provider” includes those facilities, persons and individuals defined in Va. Code § 8.01-581.1.
4. An assisted living facility or health care provider as defined in this Executive Order is immune from civil or criminal liability for the provision of health care if the assisted living facility or health care provider acts in good faith, and in the absence of gross negligence or willful misconduct, to respond to this COVID-19 emergency.
5. For purposes of § 8.01-225.01 and 8.01-225.02, a health care provider includes any entity or person (and employees and agents) (i) operating in or owning an inpatient or outpatient surgical hospital licensed under 12 VAC 5-410, free-standing emergency department or endoscopy center, physicians’ office, or dental, orthodontic, or endodontic office and which pursuant to Order of Public Health Emergency Two temporarily withholds the provision of procedures or surgeries that require PPE, the delay of which was not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death; (ii) delivering health care to persons or (iii) involved in the operation or ownership of any general hospital or nursing home licensed pursuant to Va. Code § 32.1-132, home care licensed pursuant to Va. Code § 32.1-162.9, hospice licensed pursuant to Va. Code § 32.1-162.3, assisted living facility licensed pursuant to Va. Code § 63.2-1732, adult day center licensed pursuant to Va. Code § 63.2-1733, or any alternate care site established by the state or any public or private entity for screening, examination, treatment, or recovery of any individual suspected, presently under investigation, or confirmed COVID-19 or otherwise in furtherance of Executive Order No. 51 or to allow access to care during the state of emergency shall be deemed to be a “health care provider who responds to a disaster by delivering health care to persons injured in such disaster.”
6. For purposes of this Executive Order, “alternate care site” shall include any facility, structure, device, or location established by the state or any public or private entity for screening, examination, treatment, or recovery of any individual suspected, presently under investigation, or confirmed COVID-19 or otherwise in furtherance of Executive Order 51 or to allow access to care during the state of emergency, such as any modular field treatment facility any other site designated by the State Commissioner of Health for temporary use for the purpose of providing essential services and support of the state’s COVID-19 response, including in ambulatory surgical centers, hotels, dormitories, temporary structures, telemedicine or telehealth platform, or other site.
7. For purposes of § 8.01-225.01 and 8.01-225.02, “responds to a disaster” shall be deemed to include, pursuant to Order of Public Health Emergency Two, temporary

withholding of the provision of procedures, consultations or surgeries performed in an inpatient or outpatient surgical hospital licensed under 12 VAC 5-410, free-standing emergency department or endoscopy center, physicians' office, or dental, orthodontic, or endodontic office that require PPE, the delay of which was not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death.

8. For purposes of § 8.01-225.02.A.ii, “the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency” shall be deemed to include: (i) insufficient availability of PPE, ventilators, or other supplies or equipment; (ii) insufficient availability of trained staff; (iii) having licensed health care professionals deliver care that, while included in the scope of their licensure, exceeds the scope of their credentials at the hospital or other health care facility at which they deliver services or exceeds the scope of the services that they normally provide; (iv) implementation of crisis standards of care in any setting; (v) delivery of care in an alternate care site; and (vi) using supplies or equipment in innovative ways that are different from the way that these supplies and equipment are normally used.
9. For purposes of § 44-146.23, “public or private agencies” shall be deemed to include any health care provider, home care licensed pursuant to Va. Code § 32.1-162.9, hospice licensed pursuant to Va. Code § 32.1-162.3, adult day center licensed pursuant to Va. Code § 63.2-1733, and any assisted living facility licensed pursuant to Va. Code § 63.2-1732 and any employee of any such health care provider or assisted living facility shall be deemed “public or private employees.” Further, for purposes of § 44-146.23, “engaged in any emergency services activities while complying with or attempting to comply with this chapter or any rule, regulation, or executive order” shall be deemed to include any action taken pursuant to Executive Order No. 51 or any subsequent Executive Order or Order of Public Health Emergency or any other regulation or guidance issued by any federal or state agency pertaining to COVID-19 emergency response.
10. Nothing in this Executive Order shall affect the right or ability to claim immunity from liability for any cause of action under any other federal or state law, regulations, rule, or order or any theory of common law immunity nor the right of any person to receive benefits to which he would otherwise be entitled under law nor the right of any such person to receive any benefits or compensation under any act of the General Assembly or United States Congress.

### **Effective Date of this Executive Order**

This Executive Order shall be effective be effective March 12, 2020 and shall remain in full force and in effect until the expiration of Executive Order 51.

Given under my hand and under the Seal of the Commonwealth of Virginia, this XXX day of April, 2020.

**[SEAL]**

Ralph S. Northam, Governor  
**[SIGNATURE]**

Attest:

**[SIGNATURE]**  
Kelly Thomasson, Secretary of the Commonwealth