

Frequently Asked Questions **Updated as of June 17, 2020**

1. If I volunteer to help in this crisis, am I covered by the emergency legislation that protects volunteers?

The state and federal law is rapidly changing on this front. Without knowing the precise details of the volunteer arrangements (i.e., practicing within your state or in another location, within your specialty or in a different field, paid or unpaid), we cannot give an accurate answer to this question, and recommend that you consult your own attorney with the specifics of your situation.

For general reference, NJ PURE notes that there are certain liability protections and immunities for volunteer medical services, but these exemptions have important limitations. Under the federal Public Readiness and Emergency Preparedness Act, the administration of certain defined COVID-19 “countermeasures” is entitled to legal immunity. However, it is specific to the countermeasures as defined by statute, such as anti-viral and vaccine administration. The New Jersey “Good Samaritan” statute immunizes certain emergency treatment, but is generally not applicable to treatment provided in a hospital or other in-patient settings. See N.J.S.A. 2A:62A-1. Federal law provides certain immunities from liability for volunteers to the extent they are acting on behalf of a non-profit organization or governmental entity and certain other specific criteria are met. See 42 U.S.C.A. § 14503.

Separately, federal law has imposed a requirement of some consistency in the applicability of the legal standards for liability of a physician responding to a public health emergency, provided that the physician is registered on the Emergency System for Advance Registration of Volunteer Health Professionals. See 42 U.S.C.A. § 234 (West).

On April 1, 2020, Governor Murphy signed [Executive Order 112](#), the corrected copy of which states that health care professionals “shall be immune from civil liability for any damages alleged to have been sustained as a result of the individual’s acts or omissions undertaken in good faith in the course of providing health care services in support of the State’s COVID-19 response, whether or not within the scope of their practice and whether or not such immunity is otherwise available under current law.” This immunity is available provided that the treatment at issue did not “constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct” and does not appear to be dependent upon the provider serving in a volunteer capacity at the time the treatment is provided. The Legislature codified this Executive Order as a statute, P.L.2020, c.18, and also included a provision immunizing providers treating patients outside their normal practice area as well as providers practicing telemedicine in response to COVID-19. The legislation also provides immunity to health care facilities and its employees against claims for allocating scarce medical resources if the health care facility adopted and adhered to a scarce critical resource allocation policy that at a minimum incorporates the core principles identified by the Commissioner of Health. NJ PURE has been in contact with numerous federal and state legislators to advocate for these, as well as additional, protections on behalf of health care providers.

2. If I provide medical services outside my area of specialty or experience during this crisis, will my malpractice policy cover me?

Certain medical procedures, such as trauma services, surgery and anesthesiology, may be provided only by individuals specifically qualified and credentialed to do so. See N.J.A.C. 13:35-4.1, 13:35-4A.8. Your NJ PURE policy was issued and delivered to you based upon, among other things, the information you reported regarding your specific practice area. Practicing outside of your specialty, particularly in an area where your prior experience is limited and/or remote, may implicate coverage issues under your policy.

As noted, the immunity recently conferred by Executive Order 112 and the codifying legislation confers immunity regardless of whether the health care provider is providing services “within the scope of their practice.” This immunity from legal liability does not necessarily vitiate the requirement of proper credentialing for certain procedures, but may offer legal protections and immunities. As it is impossible to foresee the specific circumstances under which this scenario may occur, we would suggest you contact NJ PURE or your personal counsel to clarify the coverage implications of your particular situation.

3. What steps can or should I take to protect myself in acting in a volunteer capacity or practicing outside of my area of specialty on the request of a hospital?

As noted above, Executive Order 112 and the related statute provide broad immunity to many health care professionals acting in such a capacity. NJ PURE cannot provide you with legal advice and would strongly suggest you consult with personal counsel if you have questions about your potential exposure and the applicability/adequacy of your insurance coverage for such a scenario. You may wish to consider discussing the possibility of a contractual indemnification agreement with your personal counsel, which may allow you to transfer the risk of loss to the hospital requesting your services. See BLACK'S LAW DICTIONARY (11th ed. 2019) (defining indemnity as “1. A duty to make good any loss, damage, or liability incurred by another. 2. The right of an injured party to claim reimbursement for its loss, damage, or liability from a person who has such a duty.”). We also encourage every provider to have a facility, such as a hospital, which is extending privileges to you in an area that is normally outside the scope of your practice, to document the extension of those privileges.

4. Does my malpractice policy cover me if I treat patients remotely via telehealth or telemedicine (*i.e.*, patients who I do not see face-to-face) during this pandemic?

Generally yes, your NJ PURE and Liberty Insurance Underwriters, Inc. policy will cover you for all such treatment provided that it complies with applicable law. Please consult your specific policy¹ and contact us with questions about your policy.

¹ This bulletin does not supplement or supplant your insurance policy, with all amendments and endorsements. It is provided for informational purposes only. Please refer to your specific policy for all terms, conditions, limitations, and exclusions.

N.J.S.A. 45:1-61 defines telehealth and telemedicine, and Governor Murphy has signed an Executive Order that relaxes certain telemedicine and telehealth requirements during the COVID-19 pandemic. NJ PURE cannot offer advice or an opinion regarding whether your specific telemedicine or telehealth program is in compliance with current law, and therefore we suggest that you consult with your personal counsel to ensure that your telemedicine and telehealth practices are permissible.

As mentioned above, the New Jersey Legislature recently passed a statute, P.L.2020, c.18, that includes immunity for some providers who are, due to COVID-19 “engaging in telemedicine or telehealth, and diagnosing or treating patients outside the normal scope of the health care professional’s license or practice,” provided any alleged act or omission does not constitute a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct. Such immunity does not, however, assure that a claim or suit would not be brought against a provider, and is not necessarily effective for claims that may be brought in other jurisdictions, as discussed below.

**5. Can I be outside the State of New Jersey when I remotely treat patients?
Can I remotely treat patients who are located out of the State of New Jersey?**

Generally, your license (in accordance with the Medical Board of Examiners) does not extend to the treatment of patients outside the State of New Jersey. However, the current laws and regulations concerning telehealth and telemedicine are, in some situations, not limited to the treatment of patients in New Jersey, creating a gray area. While you should consult your own attorney on licensing requirements, there does not appear to be any restriction on your location when treating patients who are in New Jersey, but you must keep in mind that different rules apply depending on whether your patient is a Medicare beneficiary or has private insurance.

However, if your patient is physically located outside of New Jersey at the time of treatment, the issue is unclear and requires an analysis of the law of the state in which the patient is physically located as well as federal law if the patient is a Medicare beneficiary. For example, both New York and Pennsylvania require physicians to be licensed in their respective states when providing telemedicine and telehealth services to patients located within those states. Pennsylvania has relaxed, to some extent, that requirement during this crisis and is requiring out-of-state physicians to register to provide virtual medicine to patients in Pennsylvania. For more information and to register, please visit [here](#). New York has not, as of yet, similarly relaxed its telemedicine or telehealth requirements.

Regardless of the regulations or laws that allow (or disallow) treating patients in other states, you may wish to consider the potential legal ramifications of such treatment. If you treat a patient who is physically present in another state through telehealth or telemedicine, you may be subjecting yourself to the jurisdiction and/or law of the state in which the patient is located. It is your responsibility to ensure that all treatment you provide conforms to any applicable law and regulations. If you intend to practice telemedicine on patients physically present outside the State of New Jersey, you may wish to consult with legal counsel and/or review the relevant statutes and regulations of the jurisdiction in which the patient is physically present.

For further information regarding the rapidly changing regulations regarding telemedicine, we suggest you visit the AMA's "quick guide" to telemedicine practice: [AMA Quick Guide](#). Although we cannot foresee or predict all potential factual and legal scenarios which may arise, in all events, coverage under your policy will be provided consistent with the policy's terms and the controlling law. In addition, although the rules and regulations applicable to telemedicine and telehealth have been relaxed on the Federal and State levels as a result of COVID-19, please keep in mind that once the declaration of public emergency is removed, many, if not all, of these changes will likely be revoked.

6. If I am implementing a new protocol of telehealth or telemedicine, should I provide a notice to all patients?

NJ PURE encourages all physicians who are implementing any new protocols about patient treatment to advise their patients. In this case, not all private health insurance carriers offer telehealth or telemedicine coverage although more carriers have been offering such coverage in light of COVID-19. Patients should be encouraged to consult their plan for benefit coverage.

Linked here are sample [General Telemedicine Guidelines](#) and a sample [Consent to Engage in Telehealth and Telemedicine](#) form; however, you should consult your own attorney or advisor to make the best plan for your practice.

7. Does my telehealth or telemedicine program need to be HIPAA compliant?

The Department of Health and Human Services (HHS), through the Office of Civil Rights, is responsible for ensuring certain aspects of HIPAA compliance. During the COVID-19 national emergency, HHS will exercise enforcement discretion when evaluating the communication technologies that providers use when communicating with patients.

The emergency New Jersey Executive Order discussed above in FAQ #1 also provides that the NJ Commissioner of Health is required to waive certain requirements related to telehealth and telemedicine, including privacy requirements that limit the use of certain electronic or technological devices that would not otherwise typically be allowable for telehealth or telemedicine.

The guidance offered [here](#) is intended to provide health care professionals - physicians, advanced practice nurses, physician assistants and others – with advice to safely care for patients with COVID-19 concerns in an outpatient office setting exercising their best clinical judgments.

8. Who can I call for help?

In addition to your own attorney, NJ PURE has professionals to offer suggestions and ideas during this difficult time. Please do not hesitate to contact Patti McAndrew, NJ PURE's Director of Loss Control/Risk Management, at pmcandrew@njpure.com or 609-937-0955. Please note, however, that NJ PURE will not provide you with a legal opinion or a preemptive, hypothetical coverage determination.