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Utah Enacts Healthcare Provider Immunity Law to Address COVID-19 Pandemic

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On Wednesday, April 22, 2020, Utah Governor Gary Herbert signed into law S.B. 3002, which provides heightened immunity for healthcare providers delivering treatment during the COVID-19 pandemic. Specifically, during a declared major public health emergency (as defined U.C.A. 58-85-106), the law gives civil liability immunity to healthcare providers delivering care to patients having the illness causing the health emergency (in this case, COVID-19), as long as the care is (i) provided in good faith and (ii) not grossly negligent or intentionally or maliciously conducted. Such immunity applies even where the healthcare provider is not a volunteer but is paid for their services. If the public health emergency results in a shortage of health care providers, the bill also provides the aforementioned level of immunity to healthcare providers that are practicing outside their normal scope of practice, but who are otherwise properly licensed for the level of care provided.

Additionally, as long as a healthcare provider is not grossly negligent and does not engage in intentional or malicious conduct, the law provides immunity from civil, criminal, and licensing actions for healthcare providers when they provide treatments not FDA-indicated to treat the illness (although FDA-approved for other indications). To qualify for such immunity, the treatment must (i) be within the scope of the provider's license, (ii) be provided in accordance with written recommendations issued by a federal agency on using the treatment for the particular illness, and (iii) the provider must provide informed consent to the patient (or their personal representative) regarding the potential benefits and harmful outcomes of the treatment, and document in the patient's medical record the informed consent and the patient/personal representative approval for the treatment.

Last, the law provides immunity from civil, criminal, and licensing actions against physicians when they use an investigational drug or device on a COVID-19 patient, as long as there is an agreement between the manufacturer and the treating provider that allows for the transfer of the drug/device to the physician and for the physician to use the drug/device on the particular patient. Such agreement must include an informed consent by the patient or patient representative that (i) describes the potential benefits and harmful outcomes of the drug/device, (ii) states that an insurer is not required to cover the cost of the drug/device, and (iii) states that the patient may be liable for all expenses caused by the physician treating the patient with the investigational drug/device (unless the agreement provides otherwise). The physician must also notify the

patient's insurer with the date treatment was provided and the drug/device information.

For further information, click here.

We encourage you to visit Holland & Hart's Coronavirus Healthcare Resources page for additional information for the healthcare industry.

For questions regarding this update, please contact:
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We also encourage you to visit Holland & Hart's Coronavirus Resource Site, a consolidated informational resource offering practical guidelines and proactive solutions to help companies protect their business interests and their workforce. The dynamic Resource Site is regularly refreshed with new topics and updates as the COVID-19 outbreak and the legal and regulatory responses continue to evolve. Sign up to receive updates and for upcoming webinars.

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