

April 22, 2020  
The Honorable Bill Lee, Governor of Tennessee  
600 Dr. Martin Luther King Jr. Blvd.  
Nashville, TN 37243

**DELIVERED VIA EMAIL**

Dear Governor Lee,

I am writing to follow up on the April 2, 2020 email we sent to you requesting limited liability / immunity for our health care providers and staff. Our organization has over 400 long-term care facilities with nearly fifty thousand (50,000) employees across Tennessee. We urge you to issue an executive order, pursuant to your authority in T.C.A. § 58-2-107(1)(2), in order to protect the providers of the long-term care community and other health care professionals and facilities treating patients during the COVID-19 pandemic with regard to immunity from liability.

We applaud your administration's efforts to flatten the curve of COVID-19 cases and protect Tennesseans. We hope that you agree the frontline health care providers, professionals and caregivers need protection as well. The peak impact for long-term care facilities is still ahead of us and, accordingly, we reiterate our pleas to provide limited immunity from civil and administrative liability for harm caused resulting from efforts to reduce the projected loss of lives in our facilities.

Liability protection is needed if the COVID-19 situation becomes so bad that facilities cannot secure essential supplies such as personal protective equipment that is needed to treat patients in a safe manner that also protects the staff. The rules and guidance from CMS and the CDC are constantly being updated because of the lack of knowledge about this virus. Like numerous states have done, a declaration of limited immunity would remove at least one source of anxiety felt by the caregivers and facilities – that no matter how heroically they seek to serve their residents, they will be unfairly second-guessed about their actions during this crisis.

THCA / TNCAL continues to request that you issue an executive order pursuant to T.C.A. § 58-2-107(1)(2) and provide limited liability protection as done by ten other Governors, including Arizona. In addition, in three states where the Governor does not have the authority to grant immunity through an executive order, their legislative bodies passed immunity language.

Our members, specifically nursing homes and assisted-care living facilities, are defined under Chapter 68-11-201 of the Tennessee Code. We feel that immunity should be effective from the date you declared a state of emergency to combat the corona virus (March 12, 2020). The following language has been previously shared with your staff and is probably comparable to what other health care associations have shared or requested:

Pursuant to T.C.A. § 58-2-107, it is hereby directed that for the thirty (30) days following the effective date of this Executive Order Number \_\_, all health care providers, including, but not limited to, physicians and other certified, licensed or registered health care providers and licensed health care facilities in this state shall be immune from civil or administrative liability for any injury or death alleged to have been caused at a time when such health care provider or facility was engaged in providing health care services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence or willful misconduct of such medical provider or facility. This order may be extended for additional thirty (30) day periods by subsequent executive orders.

On behalf of our 415 member facilities and their nearly fifty thousand (50,000) employees, we sincerely appreciate your efforts on behalf of all Tennesseans as we continue to care for the state's most vulnerable elderly and battle the spread of COVID-19. Thank you for your consideration to invoke immunity protection for our long-term care providers.

Sincerely,

A handwritten signature in cursive script that reads "Jesse W. Samples". The signature is written in black ink and is positioned to the left of the typed name and contact information.

Jesse W. Samples  
Executive Director  
Tennessee Health Care Association / Tennessee Center for Assisted Living  
5120 Virginia Way, Suite A21  
Brentwood, TN 37027  
(615) 834-6520 Office; (615) 346-7120 Direct, (615) 943-8610 Cell  
<http://www.thca.org>