

# 'Who Do You Want to Protect?': With CPM in Opposition, Gov. Newsom Reviewing Proposal that Would Let Nursing Homes Off the Hook from COVID-19 Liability

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Gov. Gavin Newsom is considering a controversial proposal. Should the people who own nursing homes or work in them be immune from criminal prosecution or civil lawsuits because of the novel coronavirus pandemic?

Extraordinary times and an extreme measure.

Critics tell the ABC7 News I-Team this would remove oversight at a time when patients need it most.

The letter signed by top officials from six healthcare groups asks Gov. Newsom to issue an executive order to give healthcare providers immunity from criminal or civil liability for decisions during the COVID-19 state of emergency.

One of those who signed the letter, Carmela Coyle of the California Hospital Association tells ABC7, the measure is needed relief for doctors, nurses and others on the front-line.

"These heroes who are providing extraordinary care in extraordinary times need to be protected, for the decisions that they are being forced potentially to have to make," she said.

The letter discusses scenarios that the health care system could face during the pandemic:

## Attorneys

Niall P. McCarthy

## Practice Areas

Elder Abuse

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- Thirty patients, but only 25 ventilators,
- Nursing home patients contracting coronavirus from an employee
- Deficient care because of staffing shortages

"The real question, Dan, is who do you want to protect?" Attorney Niall McCarthy told the I-Team's Dan Noyes. "Do you want to protect the owners of the nursing homes or do you want to protect the senior citizens who reside there?"

McCarthy represents senior citizens in financial and physical elder abuse cases.

He says the immunity being proposed would not be limited to COVID-19 treatment.

"No matter what you do today, no matter what how badly you screw up, you're going to have no responsibility," he said. "Well, that's a horrible idea. And you take that idea and you apply it to nursing homes, it becomes a deadly idea."

Dr. Michael Wasserman of the California Association of Long Term Care Medicine is worried about immunity giving facilities license to not do the right thing.

He said, "I've been hearing of and seeing stories in which nursing homes and assisted living facilities have literally countermanded orders to test residents or resisted testing staff in the wake of an outbreak in the community."

The letter requesting immunity for healthcare workers and facility owners has been sitting on the governor's desk for three weeks; Newsom said Thursday, a decision is coming.

"We have a team of people working on that, and as soon as we have something to say on it, I can assure you I will let you know."

Another health care official who signed that letter sent a statement late Friday, saying the measure is important to address a surge in lawsuits that will come with the second-guessing of caregivers.

Here is the full statement from Craig Cornett, CEO/President, California Association of Health Facilities:

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"Skilled nursing facilities have been on the front lines of fighting the COVID-19 pandemic and have suffered from a lack of access to testing and personal protective equipment, diminished nurse staffing and inconsistent directives from county, state and federal agencies, including pressure to take untested patients.

We are seeking baseline protection from the expected surge in litigation that will inevitably engage in the second-guessing of caregivers seeking to do their best under impossible circumstances. The proposed liability protection is not absolute and facilities are still exposed to liability resulting from willful conduct during the emergency.

Existing California law (Gov't Code 8659) provides identical civil liability protection during declared emergencies as the coalition letter states, but current law only covers hospitals, physicians, nurses and other specified practitioners. No other type of health facility is protected.

In light of the pandemic, the insurance markets for health facilities have become extremely challenging and skilled nursing facilities are losing access to affordable liability insurance coverage for claims made during or after the emergency. A significant amount of the costs associated with insurance coverage are passed on to the Medi-Cal program as a state cost.

Governor's have granted similar executive orders in the following states: New York, New Jersey, Illinois, Hawaii, Michigan, Rhode Island, Wisconsin, Connecticut, Arizona, Arkansas and Georgia... *(To read the entire article, please click [HERE](#))*