



New Hampshire Legislature Codifies Health Facility Immunity for COVID-19

By: **Melissa M. Hanlon**

NH Governor Sununu signed Senate Bill 149, which is the legislature's codification of an earlier Opinion issued on April 22, 2020 by then Attorney General Gordon J. MacDonald (now Chief Justice of the NH Supreme Court).

The bill provides that "Acute care hospitals, assisted living facilities, long-term care facilities, nursing facilities, residential care facilities, ambulatory care clinics, and any other similar facilities providing care to elderly or infirm patients, and the employees, agents and volunteers of such health facilities, are deemed to have been engaged in preparing for and/or carrying out "emergency management" functions" for the purposes of RSA 21-P:35 when complying, or reasonably attempting to comply, with any executive order, agency order, or rule declared under state or federal law in response to COVID-19.

The statute specifically includes waivers from the Centers for Medicare and Medicaid Services (CMS). The statute provides that Health Facilities are immune from liability for the death or injury to persons, or damage to property, as a result of compliance with, or attempts to comply with, emergency orders.



The statute does not apply to actions against Health Facilities that are not related to compliance with emergency orders or rules. In addition, the Health Facilities are not afforded immunity once the emergency orders or rules are no longer in effect. In NH, our State of Emergency ended on June 11, 2021.

While this affords some protection to Health Facilities and staff, the Court will need to determine on a case by case basis whether the immunity applies.



Melissa M. Hanlon

Melissa is a Member at Sulloway & Hollis. She is located in our Concord, New Hampshire office and can be reached at 603-223-2888 or Email: mhanlon@sulloway.com

[View Bio](#)