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NEWS & EVENTS

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Traub Lieberman Partner Colleen Hastie Co-Authors Article, "Examining the PREP Act—Healthcare Provider Liability Immunity During the COVID-19 Pandemic," Featured in USLAW Magazine

Related Attorneys:



In 2020, the COVID-19 pandemic swept the globe, resulting in millions of hospitalizations and hundreds of thousands of deaths in the United States.1 The healthcare provider industry, at the forefront of combatting this insidious virus, faced severe challenges, including unprecedented inundation of medical facilities with severely sick patients, equipment, medication, and bed shortages and overburdened, under rested, and often sick, staff to treat patients. Healthcare providers were given little guidance and support in handling the pandemic and confronted with quickly shifting executive orders and regulations from state and government officials. Within a few months, our society was thrown into a state of deep economic and social disrepair. The effects of the pandemic will be felt throughout the world and legal and healthcare communities for years to come.

This is not the first time the United States faced a health crisis with the potential to disrupt the operation of our health care system. The avian flu posed a real risk of overwhelming all aspects of the United States healthcare system, prompting Congress' enactment of the Public Readiness and Emergency Preparedness Act ("PREP Act") in 2005.2 The PREP Act authorizes the Secretary of Health and Human Services ("Secretary") to issue a declaration providing immunity from Federal and State liability, to persons involved in the manufacture, testing, distribution, administration and use of countermeasures, arising from public health emergencies. On March 17, 2020, the Secretary published a declaration to the PREP Act, extending liability protections to countermeasures against Covid-19.3

The PREP Act provides immunity to any person or entity that manufacturers, distributes, prescribes, or administers countermeasures, including licensed health professionals that have treated patients with defined countermeasures. Countermeasures are defined as qualified pandemic or epidemic products, drugs, biological products, or devices the Secretary deems a priority for use during the public health emergency. The PREP Act provides immunity for any loss that has a causal relationship with the administration or use by an individual, of a covered countermeasure during the declaration's effective period. This includes a causal relationship with the design, development, clinical testing, investigation, manufacturing, labeling, distribution, and other activities, of covered countermeasures.

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