May 7, 2020

Dear Member of the California Congressional Delegation:

California’s hospitals and physicians, as well as those serving in supporting roles, are on the front lines of a crisis unlike any our state has ever faced. As you know, on March 4, a state of emergency was declared in California due to the threat of COVID-19. Every hospital and physician in the state was called upon to prepare for a surge of acutely ill patients. Providers stepped up, responding to the call to action by ceasing non-essential services and creating new patient care units in tents, arenas, convention centers, and other unlikely spaces.

Health care providers raced against time to prepare to treat and care for Californians with COVID-19, along with the sick or injured patients we serve every day. Collectively, we have had one goal: save as many lives as possible. Effectively minimizing death and serious illness among the population as a whole requires distributing finite resources to those who have the greatest opportunity to benefit, thereby maximizing appropriate care for the greatest number of patients.

With that goal, we request Congress to pass legislation that includes protection for health care workers against unfair lawsuits.

Making beds available for COVID-19 patients means delaying care to patients who need biopsies, heart valve replacements, or gall bladder removals. Preventing the spread of COVID-19 means restricting visitors in our hospitals and clinics and shuttering private medical practices. Saving the lives of patients afflicted with a new pathogen means trying drugs, doses, or procedures without full knowledge of all the ramifications.

Health care providers need assurance they will not later be judged or sued when abiding by the government’s directives to create surge capacity, or when making care decisions based on their best judgment and determination at the time. In this time of crisis, hospitals and physicians must be able to observe, evaluate, and respond to rapidly changing conditions and events; the prospect of being subjected to future lawsuits would burden and slow these decisions, threatening greater loss of life throughout California. Basic ethical principles governing crisis triage decisions include accountability — not only for health care providers called upon to make such decisions, but also for the government in supporting the processes to make these decisions and protecting the providers who make them.

As providers continue their work in the coming weeks and months, we must give them the support they need to make the best possible decisions, including protections from future legal action, as long as that protection does not excuse willful malicious intent to cause harm. To help understand the magnitude of the situation, here are several examples of the kinds of situations our health care system will face:

- A hospital postpones a patient’s elective surgery to accommodate a surge of COVID-19 patients, thus delaying care to the surgery patient.
- A physician tries to save a COVID-19 patient by using a drug that has not yet been approved for that use.
- Thirty patients require ventilators, but a hospital has only 25 ventilators.
- A hospital has too few pulmonologists, so obstetricians agree to care for respiratory patients.
- A patient no longer needs acute care and is moved to a post-acute facility, although the patient preferred to stay at the acute care facility and did not provide consent to be transferred.
- A patient contracts COVID-19 from a hospital employee, even though the hospital used proper screening techniques when employees arrived at work.
- A psychiatric hospital suspends group dining and activities and restricts visitors due to social distancing requirements, and is sued for causing or exacerbating depression by isolating patients in their rooms.
- A facility or physician office cannot access N95 masks, and health care providers are asked to deliver care using surgical masks.
- A gynecology office closed during the COVID-19 crisis to comply with government orders and deferred all patient annual exams. When care is resumed, patient whose annual exam was deferred was found to have cervical cancer that would have benefited from earlier detection.
- As elective surgeries resume, a physician obtains informed consent from a patient for elective surgery based on risks known to physician at the time of surgery. All possible precautions are taken during surgery, yet patient contracts COVID-19 from asymptomatic individual in the surgery center, which significantly impacts patient's surgical recovery.

As our care providers make these difficult decisions, they need to know they will not be prosecuted or persecuted. This request is made with the deep understanding that every care provider is doing all they can to protect all Californians during this unprecedented crisis.

Sincerely,

Carmela Coyle
California Hospital Association

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