

Should Texas doctors, hospitals and nursing homes be protected from lawsuits during the COVID-19 pandemic?

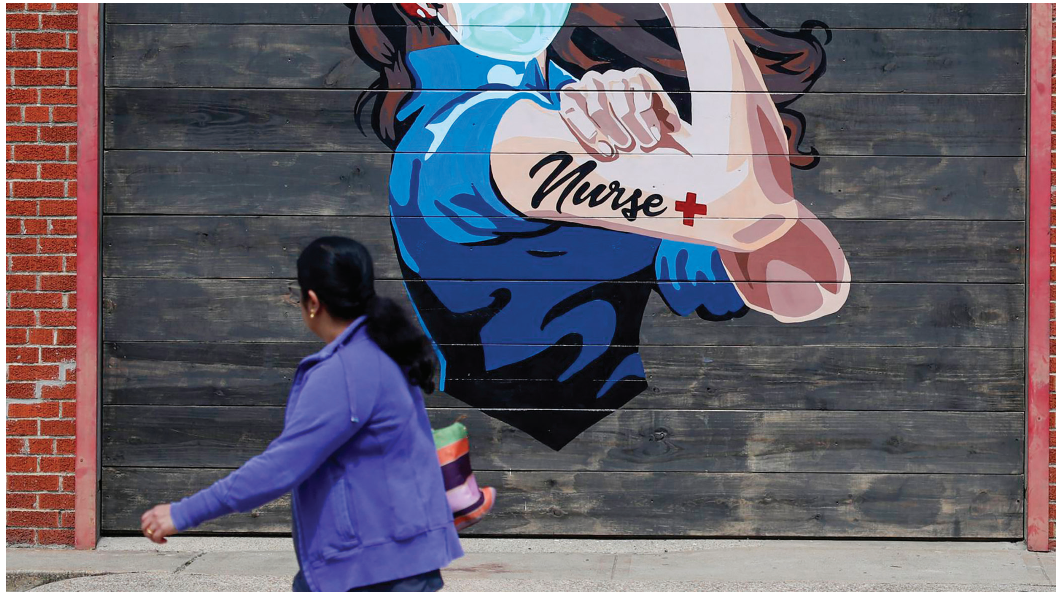
Health care groups argue providers should be protected from coronavirus-related lawsuits.

By Lauren McGaughy
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AUSTIN — Several of the top health care associations in Texas want Gov. Greg Abbott to grant them extra protections from potential lawsuits during the coronavirus pandemic.

In an [April 3 letter](#), the Texas Medical Association, Texas Health Care Association, Texas Hospital Association

and others asked Abbott to issue an executive order extending additional liability protections to health care providers treating coronavirus patients.



A mural near a hospital pays tribute to nurses amid COVID-19 concerns in Dallas, Tuesday, April 7, 2020. (AP Photo/LM Otero)

Abbott has not answered the letter, Texas Health Care Association president Kevin Warren said, and the governor's staff did not return requests to comment for this story.

The request comes **as business owners affected by the coronavirus** mull how to protect themselves from coronavirus-related lawsuits, and Democrats and Republicans in Congress debate whether to include **broad liability protections in the next financial relief package**.

Opponents to handing physicians and other health care providers increased immunity argue it's already difficult to win a medical malpractice lawsuit in Texas, and add that the Texas Legislature, not the governor, should be making these decisions. Health care providers deserve this protection, the associations say, to ensure they aren't the target of frivolous lawsuits. The immunity would not apply to injuries or deaths caused by intentional, willful, or wanton misconduct, they add.

"Despite the good intentions and exhaustive efforts of these physicians and health care providers to care for Texas' patients, many attorneys are already advertising for tort litigation involving health care in response to COVID-19," the associations told Abbott. "Physicians and health care providers should not have to deal with tort lawsuits during this time. Any energy wasted on litigation is dangerously wasted at the expense of necessary patient care."

The associations have two requests: first, that Abbott issue an executive order **expanding a state code** that provides liability protection for disaster relief volunteers to include "all physicians, health care providers, and health care

facilities” treating COVID-19 patients; and second, that the state bar any coronavirus-related lawsuits against health care providers until Sept. 1.

The Trump administration extended some liability protections to health care workers as the pandemic spread across the United States. But Warren said those protections apply only to the manufacture and distribution of certain medical products.

“These measures do not protect doctors and nurses engaged in the triaging, diagnosing and treatment of known or suspected COVID-19 patients or the health care facilities they work in,” said Warren, who signed the letter to Abbott.

While he added that outside of emergency care treatment Texas doctors and nurses have never received these heightened protections before, Warren pointed to other states that have taken similar steps in recent weeks.

Jim Perdue Jr., president elect of the Texas Trial Lawyers Association, argued these Texas groups are asking for more than the increased liability protections governors in other states like **New York** have extended. Plus, he believes Abbott does not have the authority to issue such a sweeping edict.

“What this letter asks for is fundamentally against the Texas Constitution or any proper scope of executive authority,” Perdue said. “It’s kind of bad to see an effort to use an emergency to change law through executive action.”

That decision should remain with state lawmakers, he said, who have already significantly limited a patient’s ability to sue their health care providers. But Perdue said his group has not reached out to Abbott, **who allowed some businesses to begin slowly reopening Friday.**

“The orders to reopen the state are based on a predicate that we have enough [hospital] beds and we’re not in an emergency situation,” he said. “The governor has got more important things to handle about getting the economy restarted without having to address a select group of special interests.”

Lauren McGaughy is an investigative reporter based in Austin where she focuses on government accountability, criminal justice and LGBTQ issues. Before investigative team, she covered Texas politics for The News and Houston Chronicle, and Louisiana politics for The New Orleans Times-Picayune. She loves cats and comic books and cooks a mean steak.

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