April xx, 2020

The Honorable Ronald D. DeSantis
Governor, State of Florida
PL 05 Capitol
400 South Monroe Street
Tallahassee, Florida 32399

RE: Health Care Provider Liability Protections

Dear Governor DeSantis:

Florida’s hospitals and other health care providers have been on the front lines in the battle against the COVID-19 pandemic. Engaging in that battle has required brave dedication of individuals who must tirelessly and creatively provide care in an environment in which the availability of resources is uncertain and the potential for becoming infected with a deadly virus is significant. We are proud of the efforts by those health care providers and are thankful for the appreciation you have shown to them.

While the battle rages, it is unfortunate, but necessary, that steps be taken to avoid another crisis – a proliferation of inappropriate and unwarranted lawsuits. In the future, after the current awareness of the incessant harsh realities confronting patients and providers has faded, there may be some who would seek to take advantage of the COVID-19 crisis by suing providers based on applications of standards of care that would fail to account for the special challenges presented by a devastating pandemic.

The need for limited liability protections for health care providers has been recognized and addressed by the Federal government through the Public Readiness and Emergency Preparedness Act (“PREP” Act) and by states through their Governors’ executive orders. Among those executive orders were orders entered by the Governors of New York and Connecticut.

The Florida Hospital Association is requesting that you enter an executive order to provide temporary, limited immunity to Florida’s health care providers as they respond to the COVID-19 crisis. Enclosed is a draft of a proposed executive order for your consideration. Important features of the proposed executive are:

1. The proposed immunity is limited in time, as it will expire on October 1, 2020, unless further extended. The time limitation ensures that the effect of the executive order does not extend beyond the time period necessary to address the COVID-19 crisis.

2. The proposed immunity is limited in scope, as it does not apply to willful misconduct by a health care provider.
3. Health care providers who provide care and treatment consistent with standards of care, specifically developed for use in a crisis (discussed further, below), are provided temporary and limited immunity from civil liability and criminal prosecution.

4. Protection is provided to health care providers who in good faith endeavor to make decisions that will comply your Executive Order 20-72.

5. Immunity already afforded to “Good Samaritans” is extended to health care providers who would not otherwise have that immunity because they are compensated for their services or they otherwise do not meet requirements of Section 768.13, Florida Statutes, which are ordinarily appropriate but are not appropriate during a crisis.

The crisis standards of care referenced in the proposed executive order were developed by the Florida Bioethics Network (“FBN”). FBN, an affiliate of the University of Miami, was established in 1991 and works with health care providers to address complex legal and ethical issues. FBN developed the crisis standards of care in consultation with critical care physicians and ethics experts from around the United States. In developing the crisis standards of care, FBN also consulted analyses by a technical advisory committee convened by the Florida Department of Health to review actions in response to the 2009 H1N1 influenza emergency. The resulting crisis standards of care provide appropriate and necessary guidance to health care providers called upon to make the most challenging decisions required to respond to the COVID-19 crisis.

We greatly appreciate the efforts you, the Agency for Health Care Administration, the Department of Health and other state and local government agencies have undertaken to protect Florida’s citizens from the horrible effects of COVID-19. We stand ready to work with you to take steps necessary to protect Florida’s health care providers and citizens from a liability crisis.

Thank you for your consideration.

Very truly yours,

Florida Hospital Association
Associated Industries of Florida
Community Health Systems
Florida Bioethics Network
Florida Chamber of Commerce
Florida College of Emergency Physicians
Florida Justice Reform Institute
Florida Nurse Practitioners Network
Florida Society for Respiratory Care
Florida Society of Anesthesiologists