

CBA LPRC POSITION REQUEST FORM

The CBA Elder Law **position request** is as follows:

- 1) Proposed legislative or regulatory concept:

Opposing the extension of Subsection 6 of Executive Order No. 7V, which provides broad civil immunity to healthcare facilities against civil liability for injury or death related to COVID-19.

- 2) A plain language explanation and rationale for advancing this position:

The Connecticut Bar Association, Elder Law Section, has voted to approve adopting a position opposing the extension of a portion of this Executive Order beyond February 9, 2021, and seeks to urge the Governor not to extend the portion that provides immunity as it is no longer necessary given the advances made since its issuance and, more importantly, because it has eliminated the only legal avenue through which residents or their loved ones can seek accountability for inadequate or negligent care that has caused them injury, and in some cases, death (while not barring claims based on gross negligence or willful misconduct).

On April 5, 2020, Executive Order 7U provided health care professionals and facilities immunity from civil liability. *At that time*, they were operating under unknown conditions, without adequate staff, personal protective equipment, and other essential resources. The intent of Executive Order 7U (and later amended by Executive Order 7V, 4/7/20) was to encourage the maximum participation of those individuals and entities in our health care system by providing them protection from such liability acknowledging that they would be asked to work under less than optimal conditions.

More than 10 months later, the circumstances leading to the granting of immunity have vastly changed. We now have knowledge of the nature, transmission, and treatment of the disease; facilities have received millions of dollars in state and federal funding to ensure that they have the resources necessary to meet the needs of nursing facility residents; facilities have had adequate time to develop or enhance their infection control plans (which should have already been in place) to respond to the public health emergency; and we now have a vaccine. At this juncture, continuing immunity is no longer appropriate. Facilities are no longer operating in the “unknown” or without the resources they need. Should immunity from civil liability be allowed to continue, residents and their families will have no other mechanism to hold facilities accountable for negligent care to residents, some of the most vulnerable members of our population.

- 3) Is draft regulation, legislation or proposed bill included?

No.

- 4) What is the date of any legislative hearing, if known?

N/A.

- 5) Was this position previously approved by the CBA? If so, when does/did it expire?

No.

- 6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

- 7) Potential or actual CBA opposition from another CBA section or committee?

Unknown.

- 8) Strength of section position (including process and results of section vote taken on issue)

The Legislative Committee circulated a survey to the Executive Committee inquiring whether they want the Section to take a position on this issue. Out of the twenty-one members that participated in the survey, eighteen responded that they want the Section to take a position opposing the extension; two members voted that the Section should not oppose the extension. One member abstained from voting on whether the Section should take the position.

- 9) Fiscal impact (on the state):

None.

- 10) Are you seeking “fast-track” approval?¹

Yes.

¹ A “fast track” recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.