



*State of New Jersey*

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**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2022-11**

**TO:** All County Prosecutors  
Director, Division of Criminal Justice

**FROM:** Matthew J. Platkin, Attorney General

**DATE:** October 21, 2022

**SUBJECT:** **Rescission of Attorney General Law Enforcement Directive No. 2020-03, Directive Regarding Non-Prosecution of Healthcare Facilities and Professionals Adhering to Triage Protocols During COVID-19 Pandemic**

As the early days of the COVID-19 pandemic pushed healthcare systems towards the limits of their capacity in March and April 2020, healthcare providers across the country considered how they would allocate scarce medical resources (such as ventilators) among their patients in the event that the need for those resources exceeded the supply. Among the questions asked by healthcare providers confronting this weighty dilemma was whether they might face civil or criminal liability for triage judgments made as the pandemic bore down.

In New Jersey, this question was addressed through legislation and executive actions conferring a degree of immunity on healthcare facilities and professionals for certain acts or omissions relating to the pandemic response. Most notably, on April 11, 2020, the New Jersey Department of Health (DOH) published a model policy on *Allocation of Critical Care Resources During a Public Health Emergency* and issued DOH Executive Directive 20-006, which provided in relevant part:

A health care facility that adopts the Department of Health's model policy *Allocation of Critical Care Resources During a Public Health Emergency*, as well as the health care facility's agents, officers, employees, servants, representatives and volunteers, shall not be civilly liable for any damages arising from an injury to a patient caused by any act or omission pursuant to, and consistent with, such policy. Such immunity supplements any other immunities and defenses that may apply.



DOH updated and amended its model policy on December 16, 2020, and revised Executive Directive 20-006 to account for the changes to the model policy. These actions by DOH followed the Governor's recognition in Executive Order No. 112 (April 1, 2020) that "healthcare providers and facilities may be called upon to engage in acts or omissions that are critical to State's response to the unprecedented crisis related to the COVID-19 pandemic, but that may not have been contemplated by the Legislature when it enacted existing statutory immunity provisions."

Neither Executive Order No. 112 nor DOH's actions addressed healthcare providers' potential criminal liability for triage decisions, such as removing a patient from a ventilator. To address the question of criminal liability, Attorney General Grewal on April 11, 2020 issued Attorney General Law Enforcement Directive No. 2020-03. That Directive provides, in relevant part:

1. No prosecuting agency in New Jersey shall bring a criminal prosecution against any health care facility that adopts the Department of Health's model policy Allocation of Critical Care Resources During a Public Health Emergency, or against any of the health care facility's agents, officers, employees, servants, representatives or volunteers, arising from an injury to a patient caused by any act or omission pursuant to, and consistent with, such policy.
2. No prosecuting agency in New Jersey shall bring a criminal prosecution against any healthcare provider, including but not limited to a doctor, nurse, or hospital, for any act or omission in contravention of such an allocation policy without the approval of the Attorney General.

Following these actions by the Executive Branch, the Legislature codified an additional measure of civil and criminal immunity for healthcare providers in P.L.2020, c.18 (approved April 14, 2020, retroactive to March 9, 2020).

Over time, New Jersey made significant progress in responding to COVID-19 and mitigating its devastating effects. As a result, on June 4, 2021, the Governor approved P.L.2021, c.103, which addressed the expiration of certain immunities established in the early days of the pandemic. Specifically, c.103 states:

[A]ny civil or criminal immunity related to the COVID-19 response bestowed by either Executive Order No. 112 of 2020, P.L.2020, c.18, or Department of Health Executive Directive No. 20-006 (Revised) as issued December 16, 2020 upon health care professionals, health care facilities, health care systems, modular field treatment facilities, and any other sites designated by the Commissioner of the Department of Health for temporary use in connection with the State's COVID-19 response, including hotels and student dormitories, shall last until September 1, 2021, and then expire on that date. Conduct occurring prior to September 1, 2021 by health care professionals, health care facilities, or health care systems shall retain the civil or criminal immunity provided by Executive Order No. 112 of 2020, P.L.2020, c.18, or Department of Health Executive Directive No. 20-006 (Revised) as issued December 16, 2020. The civil immunity bestowed upon health care professionals in connection with the State's COVID-19 response by P.L.2020, c.18 shall continue beyond September 1, 2021 only for individuals specifically engaged in vaccinations or testing related to COVID-19.

While this legislation provided for the expiration of certain immunities related to the COVID-19 pandemic, it neither eliminated DOH's model policy nor specifically addressed Law Enforcement Executive Directive No. 2020-03. Following even more medical advances in combatting the COVID-19 pandemic, however, DOH rescinded its Executive Directive 20-006, as revised, through the issuance of Executive Directive No. 22-002 on August 18, 2022.

In light of these developments, it is likewise appropriate to rescind Attorney General Law Enforcement Directive No. 2020-03, which was predicated on the existence of the model policy that accompanied DOH's Executive Directive 20-006.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, I hereby RESCIND Attorney General Law Enforcement Directive 2020-03, "Directive Regarding Non-Prosecution of Healthcare Facilities and Professionals Adhering to Triage Protocols During COVID-19 Pandemic," prospectively, such that prosecutions for acts or omissions occurring during the period when Attorney General Law Enforcement Directive 2020-03 was in effect shall remain governed by its terms.

### **Other Provisions**

- A. **Non-enforceability by third parties.** This Directive is issued pursuant to the Attorney General's authority to supervise operations of the Department. This Directive imposes limitations that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice or their designee.
- D. **Effective date.** This Directive shall take effect immediately and shall be prospective in its effect, such that prosecutions for acts or omissions occurring during the period when Attorney General Law Enforcement Directive 2020-03 was in effect shall remain governed by its terms. This Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Matthew J. Platkin  
Attorney General

ATTEST:



Pearl Minato  
Director, Division of Criminal Justice

Dated: October 21, 2022