# Healthcare

## 2021 Risk trends

## Featured trends

Liberty Mutual and Ironshore closely monitor the healthcare market to identify market trends. These trends help us and our clients to not only recognize potential threats but to spot opportunities for improvement. We would welcome the opportunity to talk with you about the market, your strategic plans and how we can help your organization realize its goals around results and growth.

For more information on this report please contact:

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## Evolution of digital medicine

Telemedicine isn't new. First surfacing in the 1960s, the technology helped to deliver healthcare services to our nation's astronauts. However, over the past 60 years, technological, regulatory, and financial barriers have stood in the way of telemedicine's widespread adoption. Recently, we experienced a significant increase in virtual healthcare visits due to the COVID-19 pandemic.

In March 2020, the CARES Act was passed, removing many of the regulatory and financial barriers for greater telehealth adoption. Effective March 1, 2020:

- Medicare will pay providers for telehealth services at the same rate as in-office visits, and services will no longer be limited to just COVID-19 treatments.
- Physicians can reduce or completely waive Medicare patient cost-sharing for telehealth visits and other remote services.
- Expanded access to telehealth is available for all patients, not just those in rural areas, and includes both new and established patients.
- Providers licensed in one state can provide services to patients across state lines, subject to state licensure laws.
- Frequency limitations are no longer applicable on multiple Medicare telehealth services. For example, subsequent skilled nursing facility visits can be provided via telehealth without the once every 30 days limitation.
- Physicians can provide remote patient monitoring (RPM) services to both new and established patients for both acute and chronic conditions and for patients with only one disease. For example, RPM can be used to monitor a patient's oxygen saturation levels using pulse oximetry.

Shortly after these changes were enacted, we saw an immediate increase in the use of telehealth services.

The increased easement for telemedicine has created many positive effects when it comes to accessibility to quality healthcare services; however, it does come with a few drawbacks. According to Justice.gov, the streamlined process for telemedicine billing has opened the door for more fraud. In September of 2020, one of the largest medical fraud cases included more than $4.5 billion connected to telemedicine.

**Telehealth visits were up**

# 154%

in the last week of March 2020, compared with the same period the previous year. **CDC**

**46%**

**of patients**
now say they use telehealth for some visits, compared to 11% in 2019. **McKinsey**

**More than**

# 20%

**of U.S. medical visits**
are expected to be conducted virtually this year. **Doximity**

We are also seeing an increase in cyber liability exposures, making proper controls and adequate cyber coverage a must. Without the proper security controls in place, a physician's exchange of information with a patient could land in the wrong hands, with patient information being stolen through a network device with minimal security controls and resulting in entire networks being shut down. Today, any network-connected device can become an entry point - even without physical access to the practice.
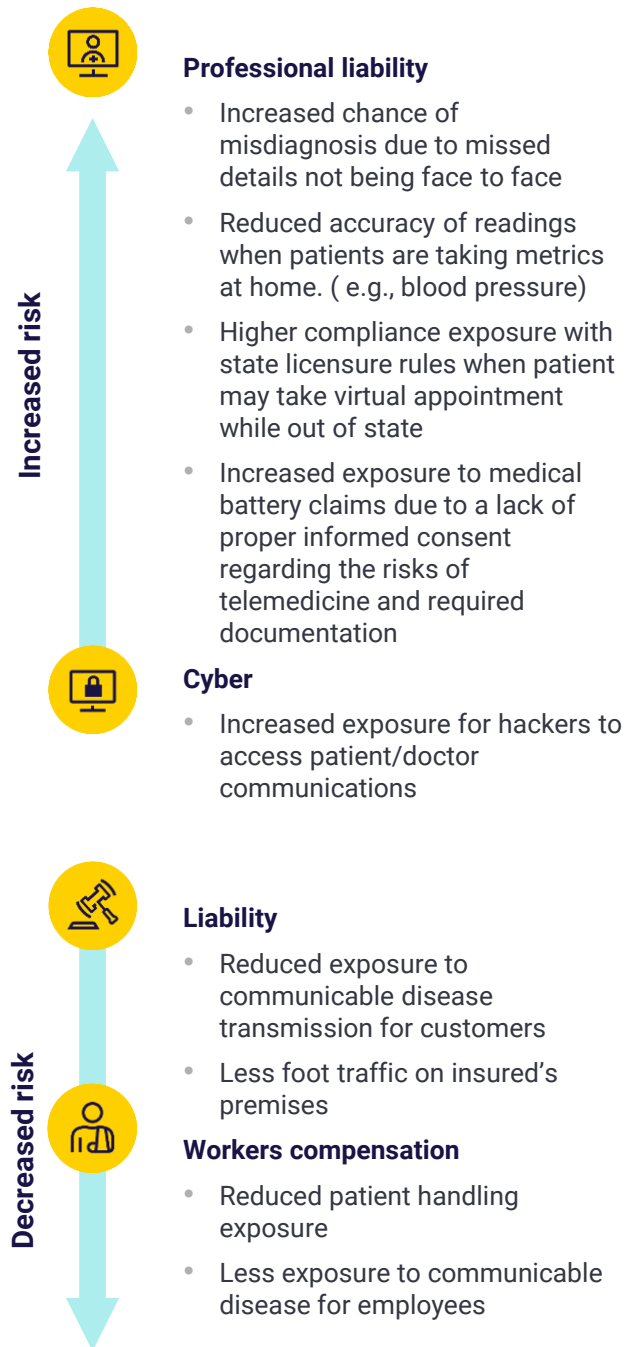
Another issue involves telemedicine and the ability to make accurate diagnoses. While there are many treatments where a virtual appointment is a great option, there is the potential for important details to be missed that would have otherwise been caught during an in-person examination. This also increases the potential for professional liability exposures. "As these exposures for professional liability, cyber liability, general liability and others present themselves they begin to overlap. It is important to be sure your coverage is adequate on each of these policies and that you've thought through all of these exposures and coverages" said Dennis Cook, President, IronHealth, a division of Liberty Mutual Healthcare.

On the other hand, there are some areas where telemedicine can decrease certain risk exposures. For example, the ability to reduce in-person office visits while still conducting the same number of appointments means less foot traffic on the provider's premises and less patient handling for workers. This also translates to fewer exposures to communicable diseases and more control over spacing of patients and appointments during outbreaks.

Then there is the shortage of healthcare workers. Currently, the healthcare industry is facing a talent shortage as many exit the field after having experienced trauma due to COVID-19. Today, the growing demand is outpacing the supply.

"When done well, expanded digital delivery can enable providers to meet the increased demand for healthcare without increasing staff, providing a more attractive alternative to professionals who don't wish to work in a facility-based environment," said Jeff Duncan, CUO, Liberty Mutual Healthcare. "The real winners will be providers who tap the potential of digital media to **provide better care** rather than providing the same care digitally."

## Impact on risk from increased use of telemedicine

**Increased risk**

**Professional liability**

- Increased chance of misdiagnosis due to missed details not being face to face
- Reduced accuracy of readings when patients are taking metrics at home. ( e.g., blood pressure)
- Higher compliance exposure with state licensure rules when patient may take virtual appointment while out of state
- Increased exposure to medical battery claims due to a lack of proper informed consent regarding the risks of telemedicine and required documentation

**Cyber**

- Increased exposure for hackers to access patient/doctor communications

**Decreased risk**

**Liability**

- Reduced exposure to communicable disease transmission for customers
- Less foot traffic on insured's premises

**Workers compensation**

- Reduced patient handling exposure
- Less exposure to communicable disease for employees

Imperative to the growth of digital medicine are the accompanying technological advances such as wearables and artificial intelligence (AI). For years we've had home blood pressure monitors and pulse oximeters. Today, wearable monitoring technology that can be used in a patient's home has expanded to include everything from glucose monitoring contact lenses to wearable heart rate patches, smart insoles for gait monitoring, and so much more. Accurate measurements and monitoring enable effective virtual care.

When it comes to artificial intelligence, machine learning is put to work in areas from natural language processing (NLP) to recommending diagnoses. NLP takes unstructured texts, including doctor's notes, and derives insights for conducting a more efficient analysis. AI imaging tools can analyze a chest x-ray for signs of tuberculosis, achieving accuracy levels comparable to human analysis and reducing the need for a trained diagnostic radiologist on site.

The applications are varied and growing daily, but with everything there is a balance of risk. For example, algorithms exist within parameters that may not adequately account for disparate ethnic groups or geographical regions with unique physiologies and certain environmental factors that can influence the presentation of disease. The more data that goes into the AI algorithms, the more applicable it will be and as time progresses we are cautiously excited to see where the technology takes us.

As we look to the future, the following questions are at the top of our healthcare leaders' minds:

- How do we maintain organizational culture and commitment to quality care with a decentralized digital workforce?
- How do we combat alarm fatigue as digital monitoring proliferates?
- How do we compete for tech talent with Apple and Amazon?

**If you are a provider of healthcare services and taking advantage of these and other emerging technologies, or if you are a manufacturer of these technologies, Liberty Mutual and IronHealth can help you identify and mitigate your risk exposure with the right insurance.**

# Senior care and its evolution

By 2050, the senior population in the U.S. (60+), is expected to grow to 17 percent.[1] Not only will this increase the demand for senior care, but due to the rising cost of long-term care, there will also be a need for a variety of other senior care solutions.

The term "senior care" has historically been associated with nursing homes and assisted living facilities. This has since evolved into multiple forms of care, including continuing care retirement communities (CCRC), also know as life plan communities, subacute care, memory care, social and medical adult daycares, and assistive technology that can help to make seniors more confident and comfortable in their own homes, while promoting their safety and independence. While the COVID-19 pandemic has accelerated this evolution, it is a trend we expect to continue as more seniors elect to age in place rather than in a facility.

 "Seniors are changing their preferences," said Jeff Duncan, CUO, Liberty Mutual Healthcare. "Today, many seniors don't want to be transported by a family member to aging resource facilities– they prefer to have resources brought to them in their home."

Part of the reason for this shift is being driven by negative publicity regarding living conditions during COVID-19, so there is an opportunity for facility operators to change consumer perceptions. However, much of it reflects a permanent shift toward aging in place. And, with costs far lower than facility-based care, many of these senior resources can be an attractive option for families caring for aging seniors.

For example, adult daycare can cost, on average, one-fifth of a traditional nursing home and half the cost of a home health aide. With Medicaid and other payers beginning to support these alternatives, we feel this trend is here to stay. "This threat to established care facility operators can become an opportunity, as they know better than anyone else what seniors will need to age-in-place successfully," said Duncan.

Facility care has three main categories: assisted living communities, nursing homes and continuing care retirement communities (CCRCs). Assisted living communities are meant for elderly residents who need assistance in their daily activities but are still able to live independently. Nursing homes are intended for elderly residents who require around-the-clock assistance and medical care. CCRCs, which are also known as Life Plan Communities, are a long-term care option that can follow a resident's needs as they transition from living independently to requiring some assistance or needing more comprehensive care. These communities offer amenities similar to a resort, while providing physician and nursing care, assisted living care, memory care, physical therapy, and, in many situations, an on-site pharmacy. A CCRC is a facility-like model that gives an aging-in-place feel to its residents as this becomes their home. We are seeing a transition away from assisted living communities and nursing homes and a growth in CCRCs.

As many CCRCs target active adults, the "not ready yet" baby boomers, currently between the ages of 57 and 75, are a prime target for this transitional solution to elderly care. "As the baby boomers continue to age their expectations of care and the senior care industry are significantly higher than prior generations. Technology will help to meet these expectations and will continue to improve the resident or patient experience. It will create new exposures for liability and you'll want to find an insurer that is comfortable with exposures across the spectrum of not only senior care, but healthcare." said Dennis Cook, President, IronHealth.

**"Today, many seniors don't want to be transported by a family member to aging resource facilities–** they prefer to have resources brought to them in their home."

By 2030, it is predicted that there will be
# 25.5 billion connected devices.

Aging in place offers the most cost-effective solution and the comfort of being at home. This option is gaining popularity as many seniors move away from facility-based aging. However, being able to age in place successfully still requires support and services. Adult daycare, also known as adult day services, provides older adults with social, medical, and therapeutic services for part of their day. These coordinated programs from professional caregivers provide a community for the aging individual and support and respite to their caregivers. Adult daycares come in many forms: mainly social, healthcare/medical, and specialized daycares such as those focused on dementia. According to IBISWorld.com, the adult daycare industry in the U.S. has grown 0.4 percent on average per year between 2016 and 2021. By the end of this year, the market size is expected to increase 4.4 percent. [2]

Whether your loved ones are aging in a facility or aging in place, technology is improving the care and safety through wearable devices. The healthcare industry is leveraging wearable devices as preventative assets to help reduce losses. By 2030, it is predicted that there will be 25.5 billion connected devices. Today, the wearable technology market for the enterprise and industrial segment is expected to grow, with the highest compound annual growth rate of 22.5 percent between 2021 and 2026. In the senior population, chronic disease monitoring through wearable devices is expected to see the most substantial growth.

In facilities, this improvement in care and safety is also translating into reduced risk for the operators. For example, wearable devices in facilities allow healthcare professionals to track changes in heart rate, blood pressure, location (elopement), blood sugar levels, and blood pressure–in real-time. This further enables the implementation of a preventative and proactive treatment strategy, creating a more controlled and planned environment. In turn, this can help reduce reactive treatments and lead to a reduced risk to employees.

For example, when it comes to patient handling, proactive treatments planned in advance can more easily include mechanical assistance in the movement of a patient, rather than an urgent situation that could lead to more manual movement of patients and strain to the employees. Wearables can also sound an alarm and transmit warning signs of slips/falls in patients, further reducing patient handling. Regarding professional liability, data retrieved at more frequent intervals can help improve the accuracy of a diagnosis and highlight potential issues in a timelier manner compared to manual monitoring.

The real benefit of wearables is letting people age in place while maintaining the peace of mind that comes with 24-hour monitoring. This constant monitoring also means seniors have a wealth of data to share with their healthcare providers to help improve the quality of their diagnosis, along with monitoring their treatment's efficacy so they can live a healthy and more independent life for as long as possible. Additionally, technologies that are carefully placed around the home can create an environment called Ambient Assisted Living (AAL). AAL provides a system comprising of smart devices, medical sensors, wireless networks, computer and software applications for monitoring the resident's well-being. By ensuring the safety and health quality of the elderly resident, AAL extends the number of years they can live independently and safely in an environment of their choosing. AAL systems can also detect the presence of others, helping seniors with personal safety, fall prevention, and fall detection. AAL is also an advantage for in-home senior care providers as it allows less frequent visits and real-time monitoring of the patient's health while also providing a medication management system including reminders while the patient is unattended.

Aside from wearables, technology is also improving the facility resident experience, communication with families, and transparency between caregivers of electronic medical records through integrative software and applications.

2. https://www.ibisworld.com/industry-statistics/market-size/adult-day-care-united-states/

# Senior Care and its Evolution

These applications, which are used by the caregivers, residents and their families, increase transparency and communication systematically and efficiently. This not only avoids confusion for all parties, it also frees up the staff to focus on patient care. These programs, coupled with wearables, can make the workplace more attractive to caregivers. They can also enable improved productivity for senior care operators, opening the door to more private pay work as aging in place is a more affordable option.

There is a large opportunity in the senior care ecosystem for insurers to leverage partnership with life sciences device makers, government entities, and healthcare providers to create customer-centric solutions for the aging population. The Internet-of-Things technologies are presenting inexpensive solutions to a 360-degree proactive patient monitoring that can save lives and mitigate risks which, in turn, can provide a more holistic approach to care for the elderly. Both insurance providers and clinicians can leverage user data to reduce losses and more effectively underwrite policies.

Improved drug management

Hand hygiene compliance

Chronic disease management

Behavior modification

Remote patient monitoring

Telehealth

Assisted living

Hospital asset management

## Risk-management preparedness for COVID-19 litigation

In the U.S., healthcare facilities and their workers continue to provide critical care for patients and residents, despite exhaustion, personal risk of infection, and fear of transmission to family members. Unfortunately, within days of COVID-19 being declared a pandemic, personal injury attorneys began strategizing how to profit off our national crisis. Actions included soliciting clients to pursue legal actions against healthcare providers, effectively challenging the quality of care provided to their COVID-19 patients. In fact, according to a March 2021 American Tort Reform Association report, the plaintiffs' bar spent $34 million in 2020 on 176,000 television ads that specifically solicited clients to pursue COVID-19 claims. [3]

Fortunately, governors and legislators in many states recognized the plaintiffs' bar attempts to profit from this tragedy and took affirmative action in 2020. Liberty's Public Affairs division, in conjunction with our customers, broker partners, and industry trades, has worked to ensure those orders are broad enough to help protect our insured facilities and their employees. These efforts include pursuing legislation where executive orders were not issued, or to codify or expand protections in orders that were issued.

To date, an estimated 41+ states have at least some level of immunity by legislation or executive order to protect against this type of COVID-19-related litigation. [4] However, it's important to note that the scope–as to who has immunity and under what circumstances/conduct it applies and the duration of immunity–will vary widely from state to state. And while the new liability protection laws will vary, most seek to protect all or specific kinds of businesses from lawsuits that attempt to establish culpability. There are, however, exceptions being made for negligence, willful misconduct, or a provable failure to follow public health orders.

Thanks to the Public Readiness Emergency Preparedness (PREP) Act that was originally enacted in 2005, there are also some federal immunities in place. With the PREP Act, the Secretary of Health and Human Services (HHS) can declare that certain "covered persons" are immune from liability. In March of 2020, Secretary Azar made a COVID-19 declaration under the PREP Act that provided nationwide immunity for covered countermeasures, along with updates to include those who administer the vaccinations.

The PREP Act protects any claim under federal or state law for a loss that has a causal relationship with the administration to or was caused by an individual covered by a countermeasure.

### States with COVID-19 immunity executive orders / legislation
*(As of 09/14/2021)*



- Immunity
- No immunity

3. https://www.atra.org/2021/02/09/report-trial-lawyers-spend-millions-on-covid-ads/

4. https://www.huschblackwell.com/newsandinsights/50-state-update-on-covid-19-business-liability-protections#linktojump22
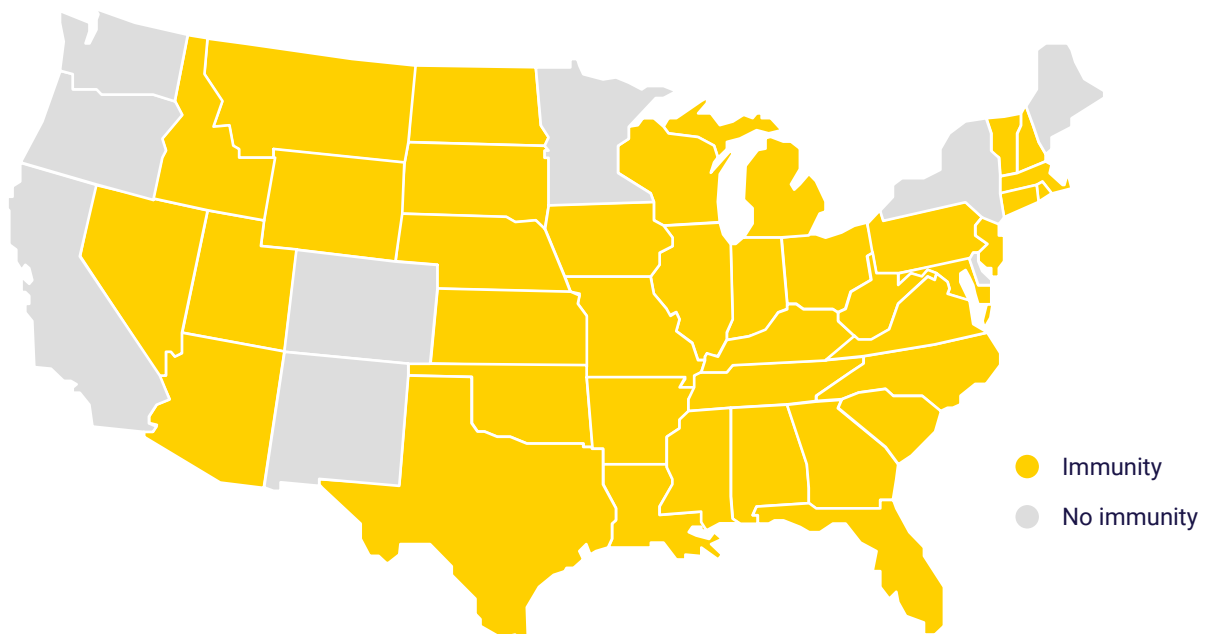
Immunity from liability under the PREP Act is not available for death or serious physical injury caused by willful misconduct.
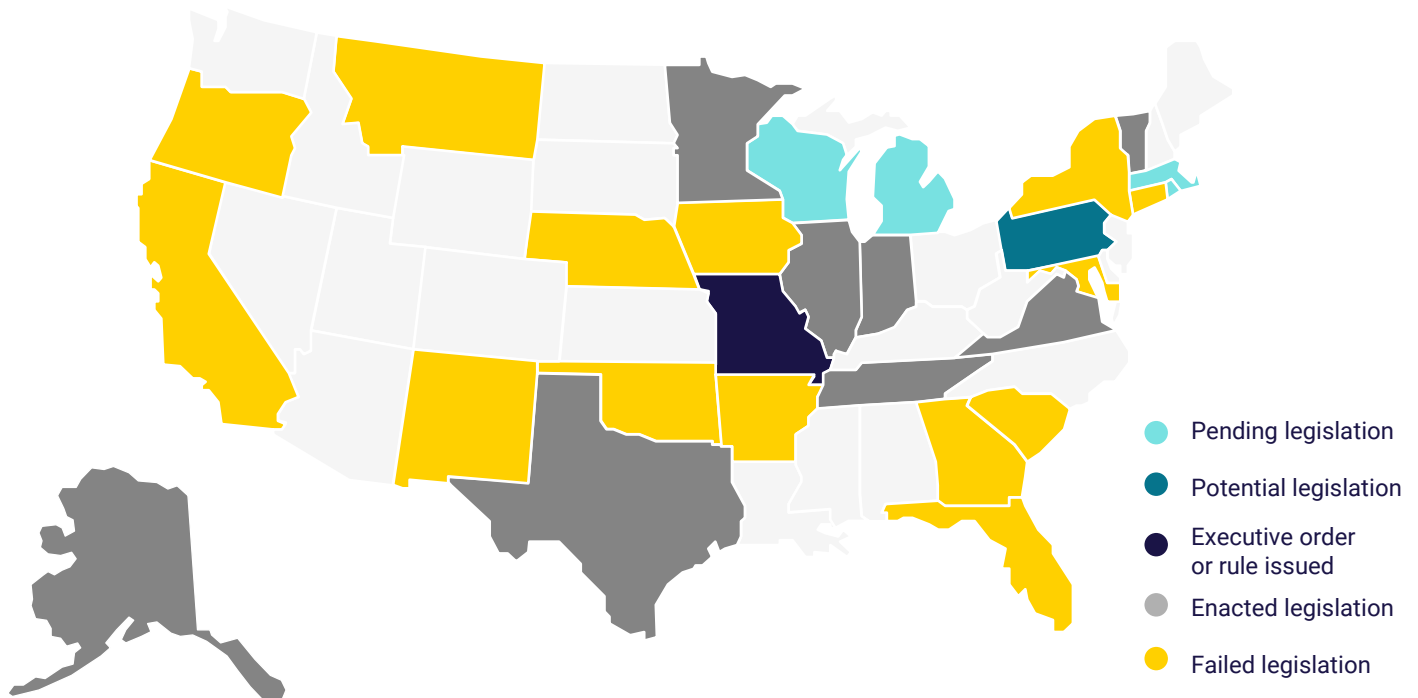
Although we are seeing less lawsuit activity than originally expected, we are not surprised at the lack in volume of cases that have come to fruition. Normal timing of litigation runs closer to the timing of statute of limitations, so it is too early to know what the activity will be. With the uncertainty of what immunity may apply, we expect plaintiff attorneys to wait and see how the immunity will hold before testing the waters. Also, with certain types of COVID-19 claims, the injury may not yet be known (e.g., claims for delayed diagnoses of other conditions, delayed treatment resulting from delayed exams and treatment, etc.).

As of September 1st of this year, approximately 250 COVID-19-related lawsuits have been filed against healthcare entities (mostly in the long-term care and senior living industry). [5] Today, more than 80 percent of these suits are filed in the top eight states—all of which have their number of cases in the double digits. In order from most to least, those top eight states are California, Florida, Kansas, Illinois, Texas, Louisiana, New York, and New Mexico.

Workers compensation has been the main avenue for employees looking to file COVID-19 claims and, in many states, presumption laws have made that easier for healthcare employees. Workers compensation presumption bills are nothing new. For example, state legislatures have enacted measures that create a presumption for firefighters who develop certain types of cancer. However, unlike this example, we have yet to understand the full scope of the medical impact from the coronavirus. As a result, Liberty Mutual has worked to help ensure that the legislation was tailored, limiting the scope of workers where the presumption applied and ensuring that any presumption was rebuttable and not conclusive in order to protect our ability to handle claims. While the liability immunities work to throttle the lawsuit and claim activity, the presumption bills have had the opposite effect. To date, our workers compensation claims activity, as it relates to COVID-19, has followed countrywide surges.

As discussed earlier, liability claims and lawsuits will likely follow the timeline for the statute of limitations. As a result, we look ahead to 2022 to see what materializes and how the immunities will hold.

**2021 COVID-19-based workers compensation presumption legislation**



Legend:
- Pending legislation
- Potential legislation
- Executive order or rule issued
- Enacted legislation
- Failed legislation

5. https://vimeo.com/552035059

While we continue to work our way through this still very active virus and all its repercussions, the following are proactive tips that healthcare providers can follow to help guard against looming liability concerns.

- Take all available precautions to protect themselves and others from Covid-19, following relevant guidance at the federal, state, and local level–including all public health orders.

- Keep up with current guidelines on how to prevent the spread of the disease and how to best diagnose and treat it.

- Be aware of bedside manner best practices and communications with patients and families.

- Understand that at all times informed consent, disclosure of risk, and duty of care are to remain paramount.

- Provide clear instructions to patients.

- Document what has been said and done, along with when and how you responded to changes in CDC and other appropriate guidelines, and the training you and your staff underwent.

- Partner with your insurance carriers on issues as they arise, communicating early and often.