

April 7, 2020

New York State Governor Signs Law Protecting Health Care Workers, Facilities and Administrators from COVID-19-Related Liability

Summary

On April 3, New York Governor Andrew Cuomo signed into law an act that immunizes health care facilities and professionals from certain forms of liability during the COVID-19 emergency. Along with a collection of other states, New York has taken action to shield health care providers from liability arising from the difficult medical decisions presented by the pandemic.

Key Takeaways

- The Emergency Disaster Treatment Protection Act temporarily immunizes health care facilities and professionals from civil liability arising from certain acts or omissions resulting in injury or death during the COVID-19 emergency.
- The new statute expands on Governor Cuomo's recent executive order – immunizing physicians and nurses – to extend liability protections to health care facilities, administrators and volunteer organizations working to address the COVID-19 outbreak.

On April 3, 2020, New York Governor Andrew Cuomo signed into law the Emergency Disaster Treatment Protection Act (the "Act"), which immunizes health care facilities and professionals from certain forms of liability during the COVID-19 emergency. The stated purpose of the Act is to "promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in [New York] from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency."¹

The Act expands on Governor Cuomo's March 23, 2020 executive order,² which protects physicians and nurses from civil liability for certain acts or omissions that result in injury or death during the COVID-19 emergency. The new law broadens this coverage to encompass health care facilities and their administrators, as well as volunteer organizations that make their facilities available to support the state's response to COVID-19.

The immunity protections under the statute apply retroactively to March 7, 2020 and will last as long as the COVID-19 emergency declaration is in effect.

Under the Act, the following three conditions must be met for immunity to apply:

1. the facility or professional arranged for or provided health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law;
2. the act or omission at issue occurred in the course of arranging for or providing health care services and the treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of New York State's directives; and
3. the health care facility or health care professional arranged for or provided health care services in good faith.³

The immunity applies to acts or omissions that result in "harm"—which is defined to include both physical and nonphysical contact that results in injury or death of an individual—or "damages," meaning economic or non-economic losses arising from such contact that results in injury or death to an individual.

It is important to note that the new law goes beyond protecting actions related to the treatment of COVID-19 itself and could encompass good-faith decisions and activities by health care professionals that were (i) made in response to or as a result of the COVID-19 outbreak and (ii) in furtherance of the state's public policy objectives. For instance, if a hospital made a decision to allocate resources to COVID-19 patients in a way that resulted in injury or death to one or more non-COVID-19 patients, but was consistent with the public good, the law could protect the hospital from liability for ordinary negligence, provided the three conditions in the statute are met.

The statute does not immunize liability for harm or damages caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct or intentional infliction of harm. However, decisions resulting from a scarcity of medical supplies, staffing or other shortages appear to be protected under the Act due to the overwhelming toll the pandemic has taken on health care resources across New York.

Finally, the new law extends the same liability protections to volunteer organizations that have made their facilities available to support New York State during the crisis. If acting in good faith, a volunteer organization will not be subject to criminal or civil liability for harm or damages that occur in or at its facilities arising from COVID-19—related activities, provided the three conditions in the statute are met.

New York and a collection of other states have taken action to mitigate some of the extraordinary challenges posed by the pandemic to our health care system and its facilities, administrators and practitioners. It remains to be seen whether other states will follow or elect to take alternative approaches to addressing the litigation risks to their health care systems and providers posed by COVID-19.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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¹ Art. 30-D, N.Y. Pub Health Law, § 3080.

² See N.Y.S. Executive Order No. 202.10 (March 23, 2020) (providing limited civil liability for professionals).

³ Art. 30-D, N.Y. Pub. Health Law, § 3082(1).