

Part GGG of NYS budget legislation S7506B, page 346 et seq, Limited Immunity from Liability for Medical services related to COVID 19

PART GGG

Section 1. The public health law is amended by adding a new article 30-D to read as follows:

ARTICLE 30-D

EMERGENCY OR DISASTER *TREATMENT PROTECTION ACT*

Section 3080. Declaration of purpose.

3081. Definitions.

3082. Limitation of liability.

§ 3080. Declaration of purpose. A public health emergency that occurs on a statewide basis requires an enormous response from state and federal and local governments working in concert with private and public health care providers in the community. The furnishing of treatment of patients during such a public health emergency is a matter of vital state concern affecting the public health, safety and welfare of all citizens. It is the purpose of this article to promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency.

§ 3081. Definitions. As used in this article:

1. The term "harm" includes physical and nonphysical contact that results in injury to or death of an individual.

2. The term "damages" means economic or non-economic losses for harm to an individual.

3. The term "health care facility" means a hospital, nursing home, or other facility licensed or authorized to provide health care services for any individual under article twenty-eight of this chapter, article sixteen and article thirty-one of the mental hygiene law or under a COVID-19 emergency rule.

4. The term "health care professional" means an individual, whether acting as an agent, volunteer, contractor, employee, or otherwise, who is:

(a) licensed or otherwise authorized under title eight, article one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-one-C, one hundred thirty-seven, one hundred thirty-nine, one hundred forty, one hundred fifty-three, one hundred fifty-four, one hundred sixty-three, one hundred sixty-four or one hundred sixty-five of the education law;

(b) a nursing attendant or certified nurse aide, including an individual who is providing care as part of an approved nursing attendant or certified nurse aide training program;

(c) licensed or certified under article thirty of this chapter to provide emergency medical services;

(d) a home care services worker as defined in section thirty-six hundred thirteen of this chapter;

(e) providing health care services within the scope of authority permitted by a COVID-19 emergency rule; or

(f) a health care facility administrator, executive, supervisor, board member, trustee or other person responsible for directing, supervising or managing a health care facility and its personnel or other individual in a comparable role.

5. The term "health care services" means services provided by a health care facility or a health care professional, regardless of the location where those services are provided, that relate to:

(a) the diagnosis, prevention, or treatment of COVID-19;

(b) the assessment or care of an individual with a confirmed or suspected case of COVID-19; or

(c) the care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency declaration.

6. The term "volunteer organization" means any organization, company or institution that has made its facility or facilities available to support the state's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule.

7. The term "COVID-19 emergency declaration" means the state disaster emergency declared for the entire state by executive order number two hundred two and any further amendments or modifications, and as may be further extended pursuant to section twenty-eight of the executive law.

8. The term "COVID-19 emergency rule" means any executive order, declaration, directive or other state or federal authorization, policy statement, rule-making, or regulation that waives, suspends, or modifies otherwise applicable state or federal law regarding scope of practice, such as modifications authorizing physicians licensed in another state to practice in the state of New York, or the delivery of care, including those regarding the facility space in which care is delivered and the equipment used to deliver care, during the COVID-19 emergency declaration.

§ 3082. Limitation of liability. 1. Notwithstanding any law to the contrary, except as provided in subdivision two of this section, any health care facility or health care professional shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services, if:

(a) the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law;

(b) the act or omission occurs in the course of arranging for or providing health care services and the treatment of the individual is 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 the state's directives; and

(c) the health care facility or health care professional is arranging for or providing health care services in good faith.

2. The immunity provided by subdivision one of this section shall not apply if the harm or damages were caused by an act or omission

constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or health care professional providing health care services, provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

3. Notwithstanding any law to the contrary, a volunteer organization shall have immunity from any liability, civil or criminal, for any harm or damages irrespective of the cause of such harm or damage occurring in or at its facility or facilities arising from the state's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule, unless it is established that such harm or damages were caused by the willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the volunteer organization.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on or after March 7, 2020 and shall apply to a claim for harm or damages only if the act or omission that caused such harm or damage occurred on or after the date of the COVID-19 emergency declaration and on or prior to the expiration date of such declaration; provided, however, this act shall not apply to any act or omission after the expiration of the COVID-19 emergency declaration.