



HEALTH LAW ALERT

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RMF
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IMMUNITY FOR HEALTH CARE FACILITIES AND PROFESSIONALS DURING THE COVID-19 EMERGENCY

The newly enacted 2021 New York State Budget includes the passage of the Emergency Disaster Treatment Protection Act (“EDTPA”). The purpose of the EDTPA is to provide immunity to health care facilities and health care professionals providing care and treatment to patients during the COVID-19 pandemic. The law takes effect immediately and is retroactive to March 7, 2020. The EDTPA expires when the COVID-19 state of emergency is ended.

The EDTPA applies to health care facilities licensed or authorized under Article 28 of the Public Health Law such as hospitals and nursing homes, and Articles 16 and 31 of the Mental Hygiene Law. Included among health care professionals are physicians, physician assistants, specialist assistants, pharmacists, nurses, licensed midwives, psychologists, social workers, mental health counselors, respiratory therapists and technicians, clinical laboratory technicians, nursing attendants or certified nurse aides, including trainees, certified first responders and emergency medical technicians, home care services workers, health care workers providing services under the COVID-19 emergency rule, and health care facility administrators, executives, supervisors, board members, trustees, and others who are responsible for directing and supervising or managing a health care facility and its personnel or serving in that role.

The immunity protection provided by the EDTPA is for civil or criminal liability covering (1) any harm or damages alleged to have been sustained as a result of an act or omission for services relating to the diagnosis, prevention, or treatment of COVID-19; (2) assessment or care of an individual with a confirmed or suspected case of COVID-19; or (3) the care of any other individual who presents for health services during the period of the COVID-19 emergency declaration, so long as certain criteria are met.

The criteria for immunity protection are as follows: (1) the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule or in accordance with applicable law; (2) the act or omission occurs in the course of arranging for or providing health care services; and (3) 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 the health care services are provided in good faith.



The immunity provided for under the EDTPA does 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. Decisions resulting from a resource or staffing shortage will not fall within this exception.

The EDTPA also provides immunity to volunteer organizations that have made its facilities available to support response activities made by the state during the COVID-19 emergency. According to the EDTPA, volunteer organizations acting in good faith will not be subject to criminal or civil liability for any harm or damages, regardless of the cause. Volunteers are afforded immunity unless it is established that harm or damages were caused by willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

If you have any questions, please contact
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