

New York State grants COVID-19 Immunity to Health Care Industry

On April 2, 2020, Governor Andrew Cuomo signed into law the New York state budget for 2020-21. The headline for this event is that New York state anticipates a budget shortfall of as much as \$15 billion and state agencies are going to be asked to absorb significant funding cuts. Receiving less attention is the fact that New York state budgets regularly include legislative initiatives. This budget is no different.

In particular, New York state has enacted the “Emergency or Disaster Treatment Protection Act,” which is designed to “protect[] ... 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.” This Act appears to have been broadly drafted to provide protection to any hospital, nursing home, or any facility providing health care services, as well as any individual — even volunteers — who are providing health care services in connection with the pandemic. In terms of protection, the Act is designed to provide any health care facility or professional immunity from liability, civil, or criminal, for any harm or damages alleged to have been sustained in connection with the COVID-19 outbreak. This broad immunity, however, is not designed to apply to harm or damages caused by willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm. This Act goes on to state that any act or omission relating to a resource or staffing shortage shall not be considered willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

If you wish to examine the wording of this particular statute, please [click here](#).

The undersigned is aware of lawsuits arising from the Ebola outbreak and questions concerning the federal or state government’s decisions in response to that earlier virus, and it seems likely there will be lawsuits concerning COVID-19. While the undersigned knows of only New York’s attempt to provide immunity for its health care industry, it seems likely other jurisdictions will follow its lead.



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