

Emergency Disaster Treatment Protection Act Lowers the Risk to Health Care Facilities and Professionals

In an effort to protect health care facilities and professionals providing care and treatment to New Yorkers during the COVID-19 crisis from potential future liability, the New York State Legislature and Gov. Cuomo have included the Emergency Disaster Treatment Protection Act (EDTPA) in the fiscal year 2021 final budget. The EDTPA shields health care facilities and professionals from most forms of civil and criminal liability from March 7, 2020, the date of the Governor's COVID-19 emergency declaration, until the emergency declaration expires. Health care facilities include hospitals, nursing homes and other facilities licensed under Article 28 of the New York State Public Health Law or Article 31 of the New York State Mental Hygiene Law; and professionals include nurses, nursing aides, nursing attendants, EMTs, homecare workers, physicians and advanced practice practitioners. Notably, EDTPA also defines professionals to include facility administrators, executives, managers, supervisors and board members who will likely have a role in developing policies and making decisions regarding the triaging of care during the COVID-19 public health crisis.

Under the EDTPA, health care facilities and professionals will not be subject to "any liability, civil or criminal, for any harm or damages [a patient allegedly] sustained [because] of an act or omission in the course of arranging for or providing health care services" during the emergency declaration if the following criteria are met:

- a. the health care facility or professional is lawfully arranging for or providing health care services in good faith;
- b. the act or omission occurs in the course of arranging for or providing health care services in response to or as a result of the COVID-19 outbreak; and
- c. the COVID-19 outbreak or the state's directives impact the health care facility's or health care professional's decisions or activities which, in turn, impact the patient's treatment.

There is one exception to the EDTPA's protections: where 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." Significantly, however, acts, omissions or decisions resulting from a resource or staffing shortage are explicitly exempted from this category if the criteria above are met. Consequently, in the event of an overwhelming surge of COVID-19 patients, the EDTPA will shield health care facilities and professionals from liability if they are forced to triage their limited resources and staff in a way that adversely impacts some patients to the potential advantage of others.

The language of the legislation was drafted and aggressively advocated by the Greater New York Hospital Association (GNYHA), a trade association that advocates on behalf of hospitals in the New York City metropolitan area where the COVID-19 public health crisis has hit the hardest. The legislation was also supported by the Health Law Section of the New York State Bar Association.

EDTPA also goes beyond the immunity provided for physicians, nurses and advanced practice practitioners provided in Executive Order 202.10 in time and scope. For more information about Executive Order 202.10, [click here](#).

Overall, the EDTPA significantly lowers the risk of health care facilities and professionals facing future civil and criminal lawsuits and allows them to focus on providing care and treatment to their patients during this unprecedented time.

For more information regarding EDTPA or its applicability, please contact [Jennifer M. Schwartzott](#), [Claire G. Bopp](#), or any of the [attorneys](#) in our [Health Care practice](#) or the attorney in the firm with whom you are regularly in contact.



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