

## NYS Narrows Scope of Immunity Protections for Health Care Facilities and Professionals

In April, the New York State Legislature and Gov. Andrew Cuomo passed the Emergency Disaster Treatment Protection Act (EDTPA). The EDTPA was codified at New York State Public Health Law §§ 3080, 3081, 3082. As discussed in the firm's April 6, 2020 [information memo regarding EDTPA](#), the legislation shields health care facilities and professionals from civil and criminal liability, except for gross negligence, from March 7, 2020, until the governor's COVID-19 emergency declaration expires.

Despite the seemingly well-intended objective, some patient rights groups were critical of the legislation from the outset and complained that it unfairly restricted the rights of patients and their loved ones who died or may die during the COVID-19 pandemic. Those groups called for a full repeal of the EDTPA. Although a full repeal of the EDTPA was proposed in the New York State Assembly, it was not widely supported and did not reach a full vote of the Assembly. Instead, in July 2020, the full Legislature passed a bill that narrows the coverage of the immunity to the provision of health care services that relate to the diagnosis or treatment of COVID-19 or the assessment or care of an individual as it relates to COVID 19, when such individual has a confirmed or suspected case of COVID-19 – the original law provided immunities for facilities and professionals whose activities involved “arranging” health care services. On Aug. 3, 2020, the governor signed the amendment into law.

Health care facilities are defined to 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 are defined to include nurses, nursing aides, nursing attendants, EMTs, homecare workers, physicians and advanced practice practitioners, as well as 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. Before the recent amendment, the EDTPA applied to both COVID-19 related services and other health care services that may be impacted because facilities and professionals were required to “arrange for” the COVID-19 pandemic – the amendment now limits the immunity to COVID-19 related services.

The EDTPA expressly states the legislation was enacted because: “(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”; and the legislature made clear the purpose of the EDTPA was “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.”

Specifically, the amendment modifies Article 30-D of the New York Public Health Law in the following ways:

- the definition of “health care services” in §3081(5) is amended to remove “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.”
- PHL §3082(1) is amended to remove references to “arranging for” health care services in paragraphs (a) (b) and (c).

For more information regarding EDPTA or the recent amendment to same, please contact [Jennifer M. Schwartzott](#), [Samuel Burgess](#) 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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