



NEW YORK STATE BUDGET IMPLEMENTS MAJOR COVID-19 LIABILITY PROTECTIONS FOR HEALTH CARE FACILITIES AND PROVIDERS

Later today, the New York State Legislature is set to approve, and Governor Cuomo is expected to sign, various bills that will enact the State’s FY2020-2021 budget, including the “Emergency or Disaster Treatment Protection Act” (EDTPA). As soon as the Governor signs the legislation, the EDTPA will take immediate effect, retroactive to the **March 7, 2020** COVID-19 Emergency Declaration.

The EDTPA specifically states that, until the expiration of the COVID-19 emergency declaration, any health care facility or health care professional (which includes providers **as well as** administrators, executives, supervisors, board members, and trustees) 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,” so long as the criteria discussed below are met. Health care services include services to COVID-19 patients **as well as any other individual who presents for treatment during the period of the COVID-19 emergency declaration.**

In order to be covered by the immunity in the EDTPA, the following must be met.

- (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.” [Emphasis added]

This immunity 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 are explicitly exempted from this classification.

Lastly, the EDTPA extends comprehensive liability protections to any volunteer organization that has made its facilities available to support any response or activities made by the State during the COVID-19 emergency. Any volunteer organization acting in good faith will not be subject to criminal or civil liability for any harm or damages, regardless of the cause. This protections similarly do 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.

* * * * *

Should you have any questions regarding this Alert, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

Make sure to check [Garfunkel Wild's event page](#) for all upcoming webinars that may address your present concerns.

Contact Information:

111 Great Neck Road
Great Neck, NY 11021
516.393.2200

411 Hackensack Avenue
Hackensack, NJ 07601
201.883.1030

350 Bedford Street
Stamford, CT 06901
203.316.0483

677 Broadway
Albany, NY 12207
518.242.7582

If you would like to receive Legal Alert mailings from Garfunkel Wild, P.C. electronically in the future, or if you would like to be removed from the mailing list, please contact us at info@garfunkelwild.com. This material is intended as informational only and the content should not be construed as legal advice. Readers should not act upon information in this material without first seeking professional advice. This material may be considered Attorney Advertising under certain rules of professional conduct. © 2020 Garfunkel Wild, P.C.