



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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NEW YORK INCLUDES EMERGENCY DISASTER TREATMENT PROTECTION ACT IN 2021 BUDGET, IN AN EFFORT TO LOWER RISKS TO HEALTH CARE FACILITIES AND MEDICAL PROFESSIONALS

In a remarkable effort to protect health care facilities and professionals in the face of the COVID-19 crisis, 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 protects health care facilities and professionals from most civil and criminal liability connected with COVID-19 treatment from March 7, 2020, the date of the Governor’s emergency declaration, until the declaration’s expiration.

The legislation (Chapter 56 of the Laws of 2020) defines health care facilities as including 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. EDTPA also defines professionals to include facility administrators, executives, managers, supervisors and board members who, while not actually treating patients, are responsible for policy and decision making about the strategic approach to treating the crisis.

The EDTPA, Article 30-D of the Public Health Law, grants health care facilities and professionals “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,” under the following conditions:

- 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;
- 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
- the health care facility or health care professional is arranging for or providing health care services in good faith.

The protections of the Act will not apply where the health care facility’s or professional’s “act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm” causes the harm or damages. Public Health Law § 3082(2). Nevertheless, “acts or omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.” *Id.*

Under the legislation, a health care professional includes individuals licensed or authorized under the articles of the State Education law governing: physicians; physician assistants; specialist assistants; pharmacists; nurses; midwives; psychologists; social workers; mental health practitioners; respiratory therapists and respiratory therapy technicians; and clinical laboratory technologists, histological technicians, and cytotechnologists. A health care professional further includes: a nursing attendant or certified nurse aide, including an individual who is providing care as part of an approved nursing attendant or certified nurse aide training program; an individual licensed or certified under article thirty of this chapter to provide emergency medical services; a home care services worker under Section 3600 of the Public Health Law; an individual providing health care services within the scope of authority permitted by a COVID-19 emergency rule; or a health care facility administrator, executive, supervisor, board member, trustee or other person responsible for directing, supervising or managing a health care facility and its personnel or other individual in a comparable role.

The law also grants immunity for “volunteer organizations.” The law defines volunteer organizations as “any organization, company, or institution that has made its facility or facilities available to support the state’s response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule.” Public Health Law § 3081(6).

The law is deemed to have taken effect March 7, 2020 and terminates on the lifting of the Governor’s emergency declaration.

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