

A.10840 Rules (Kim) - Referred to Assembly Rules Committee

S.8835 (Sepulveda) - Referred to Senate Codes Committee

July 21, 2020

TO: Members, New York State Legislature

This legislation would amend the recently enacted Emergency or Disaster Treatment Protection Act to repeal several provisions that provide healthcare professionals and facilities with critically important civil and criminal liability protections during the COVID-19 state emergency declaration. New York state has rightfully applauded our frontline workers and through the EDTPA, gave them assurances they could practice in good faith. Our frontline workers relied on these assurances, knowing limited and appropriate legal protections were in place. This bill would now inexplicably take much of that protection away.

The Healthcare Association of New York State strongly opposes this legislation and urges the legislature to reject it.

The COVID-19 pandemic created a public health emergency across the state that required New York's healthcare system to swiftly modify traditional models of care to meet the unprecedented demand for COVID-19-related services. New York's hospitals and nursing homes, and the professionals providing care in those facilities, responded to that call, while continuing to provide care to patients and residents with other medical conditions.

The rapid spread of COVID-19 has required healthcare providers to navigate exceptionally difficult working conditions that are far from "normal" and unlike any providers have had to face before. Healthcare facilities and professionals are providing care in a rapidly-changing environment, often in non-traditional settings and outside of their normal clinical practice. They have faced shortages of personal protective equipment, healthcare professionals and other critical resources.

To ensure healthcare facilities and professionals are not unjustly held liable for conditions or outcomes for which they have limited control during this crisis, the governor and legislature included language in the state fiscal year 2020-2021 enacted state budget to extend certain liability protections *only* for the duration of the COVID-19 emergency declaration.

This legislation would take a significant step backwards by repealing almost all of the liability protections passed by the legislature only a few months ago. First, the bill would eliminate the protections in place for healthcare professionals and facilities providing services that are not specifically related to COVID-19. This approach imposes an arbitrary and unwarranted distinction between the care provided to patients suspected of having or confirmed to have COVID-19 and those patients in need of all other types of care.

In emergency situations, such as those our frontline healthcare workers endured every single day in the spring, healthcare facilities and professionals treated everyone – those with and without COVID-19 – under

extraordinary circumstances and in non-traditional settings without fear of potentially frivolous lawsuits based on the type of patient to whom they were providing care and treatment.

Second, this bill would substantially limit current liability protections applicable to critical services provided to patients with COVID-19. Healthcare facilities and professionals providing services related to the “prevention” of COVID-19 or “arranging for” services for COVID-19-positive patients would no longer have liability protections.

Throughout this pandemic, healthcare facilities and professionals have exercised extraordinary caution to reduce the likelihood of the spread of this disease. From treating patients in non-traditional settings to limiting or delaying certain non-emergent care, all of these prevention methods are implemented with the goal of protecting New Yorkers and reducing transmission rates. There is no sound rationale why healthcare services related to the “prevention” of COVID-19 should be singled out as a service not warranting the same liability protections as other components of care. In that same vein, “arranging for” healthcare services often ensures a patient is receiving the best and most appropriate form of care. Whether that is transferring a patient to another hospital or another facility, specifically removing protections for this type of service again imposes an arbitrary distinction.

Our healthcare providers will always rise to the challenge and serve all New Yorkers in an emergency. But by removing these protections, the proposed amendments would undercut providers’ flexibility and make it harder to get the job done. This would have a chilling effect on the availability of and access to healthcare services during any spike in COVID-19 infection rates like those experienced in the spring.

New York’s healthcare facilities and the heroes working in these facilities have risen to meet the herculean challenge of responding to one of the largest public health emergencies in modern history. They have “run toward the danger” because of their unwavering commitment to providing care to all, even when their own safety and that of their loved ones is at risk.

We are grateful for and supportive of the efforts by the legislature and the executive to recognize these extraordinary circumstances by providing time-limited liability protections to healthcare providers and professionals.

We strongly oppose any legislative effort to revoke that support by repealing the provisions in PHL Article 30-D.