

NEW YORK LIMITS LIABILITY FOR HEALTH CARE FACILITIES, PROFESSIONALS, AND VOLUNTEER ORGANIZATIONS ARISING FROM THE COVID-19 EMERGENCY

Hodgson Russ Healthcare Alert
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New York has enacted wide-ranging protection for healthcare facilities, professionals, and volunteer organizations from liabilities arising from the COVID-19 crisis. This alert summarizes the key provisions.

Immunity for Health Care Facilities and Professionals

The newly enacted Emergency or Disaster Treatment Protection Act, 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.

Public Health Law § 3082(1). The statute defines the term “harm” to include “physical and nonphysical contact that results in injury to or death of an individual,” and “damages” to mean “economic or non-economic losses for harm to an individual.” Public Health Law § 3081(1), (2).

This immunity does 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

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intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.” *Id.*

What is a Health Care Facility?

Under the statute, a health care facility includes:

- a hospital, nursing home, or other facility licensed under Article 28 of the Public Health Law;
- a facility licensed under Article 16 of the Mental Hygiene Law, which governs providers of services for individuals with developmental disabilities;
- a facility licensed under Article 31 of the Mental Hygiene Law, which governs providers of services for the mentally disabled; or
- a facility under a COVID-19 emergency rule.

Public Health Law § 3081(3).

Who is a “Health Care Professional?”

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.

Public Health Law § 3081(4)(a). A health care professional further includes an individual who is:

- 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;

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- 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.

Public Health Law § 3081(4)(b)-(f).

Immunity for Volunteer Organizations

The legislation further grants volunteer organizations “immunity from any liability, civil or criminal, for any harm or damages irrespective of the cause of such harm or damage occurring in or at its facility or facilities arising from the state’s response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 rule.” Public Health Law § 3082(3). The immunity does not apply if “it is established that such harm or damages were caused by the willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the volunteer organization.” *Id.*

What is a Volunteer Organization?

A volunteer organization, includes, “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).

This definition does **not** require that an organization willingly donate its facilities or provide them at-cost or otherwise on a “volunteer” basis. Rather, the organization must only provide its facilities in response to the crisis and in accordance with a “COVID-19 emergency rule,” *i.e.*, “any executive order, declaration, directive, or other state or federal authorization, policy statement, rule-making, or regulation that waives, suspends, or modifies scope of practice,” such as those permitting out-of-state physicians to practice in New York or affecting the delivery of care, including “the facility space in which care is delivered and the equipment used to deliver care.” Public Health Law § 3081(8).

The term “volunteer organization” therefore may be something of a misnomer, as it refers to the legal circumstances under which an organization is acting rather than its nature or motivations. In this way, the statute appears to afford protections to a broad range of organizations, whether they are acting voluntarily or under compulsion, so long as they are offering their facilities in accordance with a COVID-19 emergency rule.

When Does the Law Take Effect and When Does it Terminate?

The Statute is deemed to have been in full force and effect on or after March 7, 2020 and applies to acts or omission occurring during the duration of the COVID-19 emergency declaration pursuant to Executive Order 202 and further amendments or modifications.

CONTACT US

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If you have any questions about the impact of Article 30-D on your operations and activities in response to the COVID-19 outbreak, please contact Joshua Feinstein (716.848.1318) Jane Bello Burke (518.433.2404) or Reena Dutta (716.848.1626).

Please check our Coronavirus Resource Center and our CARES Act page to access additional information related to these rapidly evolving topics.

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