
Healthcare Law Alert: Governor Cuomo Signs Legislation Repealing Certain Health Care Immunities

On Tuesday, April 6, 2021, Governor Cuomo signed into law NY Senate Bill S5177, effectively ending immunity from liability for any good faith services performed during the COVID-19 public health emergency by health care entities and professionals. The new law, which is effective immediately, repeals Article 30-D of the NY Public Health Law, also known as the Emergency or Disaster Treatment Protection Act (“EDTPA”). The EDTPA, passed only a year ago, provided immunity to nursing homes, hospitals and other providers and health care professionals from criminal or civil liability. In addition, it codified Good Samaritan protections for volunteer organizations that provided services during the COVID-19 public health emergency. Note, however, this does not affect the Good Samaritan protections for volunteer individuals, which are separately codified under Article 30 of the NY Public Health Law.

The new law leaves open the question of whether the protections granted under Article 30-D’s short existence will provide immunity as a defense to any alleged malpractice occurring while the EDTPA was still in effect. Nonetheless, plaintiffs wishing to bring a malpractice claim must still demonstrate that a provider departed from the standard of care – a difficult task, particularly at the height of the pandemic when standards were uncertain. We will continue to monitor the effects of this new law, but please reach out to one of Hancock Estabrook’s Health Law attorneys should you have any questions.