



121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751

**TO: Memo Distribution List**

LeadingAge New York

**FROM: Hinman Straub P.C.**

**RE: Explanation of New Law Amending COVID-19 Immunity Provisions Relating to Health Care Facilities and Professionals' Liability**

**DATE: August 21, 2020**

**NATURE OF THIS INFORMATION:** This is information explaining a new law that amends existing provisions relating to immunity from liability for health care facilities and professionals for care related to COVID-19.

**DATE FOR RESPONSE OR IMPLEMENTATION:** The new law took effect on August 3, 2020.

**HINMAN STRAUB CONTACT PEOPLE:** Sean Doolan

**THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:**

**Category:** Suggested Key Word(s):

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On August 3rd, the Governor signed into law legislation (A.10840/S.8835) which amends the COVID-19 immunity provisions relating to health care facilities and professionals' liability during the COVID-19 emergency. The new is law chapter 134 of the laws of 2020.

As general background, earlier this year, the State Budget included immunity from liability for individual health care providers, hospitals and nursing homes for the arranging or providing of health care services which relate to: (i) the diagnosis, prevention or treatment of COVID-19; (ii) the assessment or care of an individual with a confirmed or suspected case of COVID-19; or (iii) the care of any other person by a health care provider, nursing home or hospital and the treatment of the individual is impacted by the providers decisions or activities which in response to or as a result of the COVID-19 outbreak.

The new law signed on August 3rd narrows the scope of immunity in four ways: (a) it limits immunity to the diagnosis or treatment of COVID-19, and eliminates liability protection for care rendered for the "prevention" of COVID-19 (with respect to (i) above); (b) it limits immunity with respect to the assessment or care of an individual with a confirmed or suspected case of COVID-19, in that the assessment or care must now "relate to COVID-19" as opposed to a non-COVID related assessment or care for an individual who with a confirmed or suspected case if COVID-19; (c) the legislation eliminates immunity for the "arrangement of " health care services, limiting such immunity to only actually providing health care services; and (d) the legislation eliminates immunity for the care of other individuals who are present at a health care facility or to a health care professional during the COVID-19 declared emergency in which the treatment of the individual is impacted by the providers decisions in response to the COVID outbreak (number (iii) above). The elimination of immunity for individuals that are not diagnosed or treated for COVID-19 narrows the scope of immunity to solely those individuals are diagnosed or treated for COVID-19, and the course of treatment for said individuals. For practical purposes, this means that immunity only remains for the direct treatment for suspected or confirmed cases of COVID-19.

Significantly, one area in which immunity from liability was not changed was in the types of liability for which immunity can be asserted. The language continues to allow immunity from any liability, civil or criminal, so long as such acts or omissions are within the scope of services as limited above. Further, the persons and facilities to whom immunity attaches were not amended, nor were any changes made to acts and omissions for which immunity would not apply. That is to say, acts or omissions of gross negligence, reckless misconduct, or intentional infliction of harm or criminal misconduct remain subject to liability, notwithstanding the immunity conferred by the budget language and the amendments made thereto.

The amendments made to the original legislation take effect immediately and the changes only apply prospectively. Thus, the broader immunity protections relating to actions which occurred prior to August 3<sup>rd</sup> will remain in effect.