

**MEMORANDUM**

**A.10840 Rules (Kim)/S.8835 (Sepulveda)**

*Relates to amending provisions regarding health care facilities and professionals during the COVID-19 emergency.*

LeadingAge New York strongly opposes A.10840/S.8835, which narrows the scope of important protections under the Emergency or Disaster Treatment Protection Act [Public Health Law Article 30-D, the “Act”] afforded to health care providers operating and caring for individuals during the COVID-19 state of emergency. This bill would subject providers to liability for good faith actions taken under crisis conditions to prevent transmission of the virus, to arrange for care, and to deliver care to non-COVID patients.

Since the inception of the pandemic emergency, New York’s health care providers have strived mightily to provide high-quality care to all patients and residents, even when doing so placed themselves and their families at risk. They have worked under unprecedented crisis conditions that have affected all patients and residents, not only those with COVID-19. For the first several months of the pandemic, hospitals were overwhelmed with patients critically-ill with a little understood, highly infectious, novel virus. Health care providers in New York and across the nation faced extreme shortages of personal protective equipment (PPE). They also struggled with staffing shortages, as staff became ill, lacked care for children, or had to care for sick family members. A lack of access to COVID testing hindered providers’ ability to identify patients and staff with COVID and impeded efforts to cohort and prevent transmission. And, providers continue to struggle with a constantly shifting array of federal, state, and local directives as requirements are waived and reinstated, understanding of the virus grows, and the best practices emerge. None of these challenges are within the control of providers. Moreover, these conditions threaten to reemerge as the prevalence of the virus surges around the country. With the growth of the COVID infections in many other states, access to testing and PPE continues to be at risk.

The existing law provides reasonable protections from liability to health care providers working under these extraordinarily challenging conditions. It confers immunity only when health care is delivered in good faith and only when it was impacted by a provider’s activities in response to, or as a result of, the outbreak and in support of the State’s directives. The Act’s immunity does not apply to intentional criminal, reckless misconduct, or grossly negligent conduct.

This bill would significantly reduce even these reasonable protections. Under the bill, for example, health care providers who take steps to prevent transmission of the virus or arrange for another level of care amidst crisis conditions and in good faith may nevertheless be forced to defend themselves in lawsuits. Moreover, the bill’s elimination of protections for care delivered to non-COVID patients and care that was unrelated to COVID ignores the fact that the crisis conditions faced by our health care providers have affected all patients and residents. This bill would force dedicated providers, who acted in good faith in a crisis, to defend themselves against lawsuits second guessing their best efforts to cope with circumstances beyond their control.

As the State moves well into its fifth month of the pandemic, these health care providers are still working night and day under extraordinarily challenging conditions to ensure that residents and patients receive the highest possible quality of care. This legislation would remove reasonable protections and impose a threat of liability on these dedicated individuals and organizations.

**For these reasons, LeadingAge New York strongly opposes A.10840/S.8835 and urges that it be rejected.**

*LeadingAge New York represents over 400 not-for-profit and public long term care providers, including nursing homes, adult care and assisted living facilities, senior housing, adult day care programs, certified home health agencies, and managed long term care plans.*