



Lawsuit Reform Alliance of New York

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OPPOSE

BILL: A.10427 (Kim) / S.8497 (Biaggi)
SUBJECT: Repeals COVID liability protections
DATE: June 10, 2020
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Summary:

This legislation would repeal the emergency or disaster treatment protection act which protects health care facilities and health care professionals from liability that may result from treatment of individuals with COVID-19, except in cases of gross negligence, during the public health emergency.

Why we oppose this legislation:

Disproportionately Affects Medical Workers

- Due to COVID-19 there has been a surge of patients, reduced staff, and lack of proper PPE conditions often completely out of the control of the medical facility. The current law will not shield bad actors rather protect those acting in good faith, outlining that “The immunity provided by subdivision one of this section shall not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.”¹

May Punish Facilities Complying with State Orders

- Governor Cuomo forced nursing home facilities to accept COVID patients at the outset of the pandemic. This action was meant to distance the infected from the general population, but created new and unavoidable risks for those facilities. These facilities should not be liable for decisions by the state and circumstance beyond their control.

Would Worsen New York’s Medical Liability Crisis and Increase Claims

- New York already spends the highest amount in the nation, over 1.6 billion dollars a year, in medical liability premiums.² By revoking article 30-D section 3082 of New York public health law there will be an increase in medical liability claims leading to greater premiums.

¹ Emergency or Disaster Treatment Protection Act 2020 (NY) ss 3082 <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLW0>

² Florida Office of Insurance Regulation Report, 2011. <http://www.flair.com/siteDocuments/MedicalMalReport10012011.pdf>