

OPPOSITION

Memorandum

March 4, 2021

TO: Senate Majority Leader Andrea Stewart-Cousins
Members, Long Island Delegation of the New York State Senate
Members, Hudson Valley Delegation of the New York State Senate

FROM: Wendy Darwell, President and CEO

RE: A.3397 (Kim) – Passed Assembly
S.5177 (Biaggi) – in Senate Health Committee

The Suburban Hospital Alliance of New York State, representing hospitals and health systems on Long Island and in the Hudson Valley, opposes A.3397/S.5177, legislation that would repeal the Emergency or Disaster Treatment Protection Act (Article 30-D of the Public Health Law). The EDTPA provides healthcare professionals and facilities with critically important civil and criminal liability protections during the state public health emergency, thereby assuring frontline workers that they can practice in good faith. Healthcare providers have relied on these assurances, knowing limited and appropriate legal protections were in place. This bill now would inexplicably take that protection away.

Last year the Legislature enacted the EDTPA in recognition of the extraordinary nature of the COVID-19 pandemic. There were only a few short weeks between the time that COVID-19 entered the public consciousness and hospitals in our regions of New York State were filled to capacity and beyond. As often and as diligently as hospitals prepare for such emergencies, this was a disease for which no treatment protocols had been developed. In order to respond to a crisis of this magnitude, providers worked in non-traditional settings and outside of their normal clinical areas of practice. They have continued their critical work in the face of the ongoing workforce and resource constraints caused by COVID-19, and have exercised extraordinary caution to reduce the spread of this disease by rethinking how care is provided and delaying certain non-emergent care until it was deemed safe.

To ensure healthcare facilities and professionals are not unjustly held liable for conditions or outcomes for which they had limited control, the governor and legislature included language in last year's budget to extend certain liability protections for the duration of the COVID-19 emergency. Shortly after enactment, the state amended the EDTPA to substantially limit these liability protections (Chapter 134 of 2020). Specifically, the chaptered amendment eliminated protections for healthcare professionals and facilities providing services that are not specifically related to COVID-19, including "prevention" of COVID-19 and "arranging for" services for COVID-19-positive patients.

The arbitrary and unwarranted limitation of these liability protections was a significant step backwards. However, enactment of the currently-proposed legislation would prove to be even more damaging, as it would repeal *all* of the liability protections passed just one short year ago.

It is important to note that the appropriate patient protections are still in place. Provisions currently in effect under Public Health Law Article 30-D do not extend liability protections to providers for acts or omissions that constitute willful or intentional criminal misconduct, gross negligence, reckless misconduct or intentional infliction of harm. They also do not extend liability protections to any healthcare facility or healthcare professional not providing services in good faith and pursuant to a COVID-19 emergency rule or applicable law.

New York's healthcare facilities and the heroes working in these facilities have risen to meet the herculean challenge of responding to one of the largest public health emergencies in modern history. They have "run toward the danger" because of their unwavering commitment to providing care to all, even when their own safety and that of their loved ones is at risk.

We are grateful for and supportive of the efforts by the legislature and the executive to recognize these extraordinary circumstances by providing time-limited liability protections to healthcare providers and professionals. We urge you to retain these protections by rejecting A.3397/S.5177.