



PRACTICE ALERT

Hospital, Nursing Home, and Care Giver Immunity Provisions for the Care of Patients with COVID-19 are *repealed* as of April 6, 2021

Summary of New Law (S5177/A3397)

Beginning April 6, 2021, the Emergency or Disaster Treatment Protection Act (Article 30-D of the Public Health Law), which **formally** protected health care facilities and health care professionals from liability that may have resulted from diagnosis, treatment or assessment or care of individuals with COVID-19, is now **repealed**.

Purpose of the Repeal

As the COVID-19 pandemic has progressed in New York State, it has become apparent to our State Legislators that negligence by administrators and executives of healthcare facilities, particularly nursing homes, has occurred to an extraordinary degree.

In particular, our Legislators were concerned that Article 30-D¹ egregiously used immunity standards (liability incurred only where bad faith or gross negligence exists) as a means to insulate healthcare facilities and, specifically, administrators and executives of such facilities, from any civil or criminal liability for negligence. Our Legislators opined that repealing this article is a much-needed step to holding health care administrators accountable and doing everything possible to stop more preventable deaths from happening.²

What This Means for Nurses and Other Licensed Healthcare Practitioners

The New York State Legislature signed into law a bill **repealing** the last of the hospital, nursing home, and caregiver immunity provisions and protections for the care of patients with COVID-19.

- The Governor signed this legislation on April 6, 2021.
- The impact of the new law on RNs is that going forward, and as of April 6, 2021, the pre-pandemic (usual and customary) nursing standards of care will apply to all patients,

regardless if they have COVID-19. There are no longer any exceptions to, or immunities for, the standard of care for COVID-19 patients.

- Since the usual and customary standard of care for patients has now been restored, hospitals and nursing homes must reinstate all pre-pandemic and contractual standards for orientation, staff development training, floating, and RN competency assessment levels criterion and practices that were required to care for all patients, including COVID-19 patients (See NYSNAs Position Statement on COVID-19 Liability Protection Rollback)
- This new law only applies going forward and should not impact any potential practitioner or facility liability for past care given to patients during the COVID-19 pandemic.

¹ §§3080 – 3082 of Article 30-d of the Public Health Law Relating to the Emergency or Disaster Treatment Protection Act was originally promulgated to promote the public health, safety and welfare of all citizens by broadly protecting the healthcare facilities and healthcare professionals in New York State from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency.

²Attorney General Letitia James' January 2021 report found that Article 30-D may have provided nursing homes with "financial incentives to put residents at risk of harm by refraining from investing public funds to obtain sufficient staffing to meet residents' care needs, to purchase sufficient PPE for staff, and to provide effective training to staff to comply with infection control protocols during pandemics and other public health emergencies." The consequences have been tragic: an estimated 15,000 nursing home residents passed away from COVID. This bill would repeal the protections granted to nursing homes, hospitals, and other healthcare facilities, as recommended by Attorney General James.

References:

Mohamed. C. (April 9, 2021). Governor signs Queens assemblyman's bill repealing nursing home immunity into law. Retrieved from <https://qns.com/2021/04/governor-signs-queens-assemblymans-bill-repealing-nursing-home-immunity-into-law/>.

The New York State Senate. Article 30-D of the Public Health Law (Emergency of Disaster Treatment Protection Act). Retrieved from <https://www.nysenate.gov/legislation/laws/PBH/3082>.

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