

The Emergency Disaster Treatment Protection Act ("EDTPA"), which provides qualified immunity from civil and criminal liability to medical professionals and medical facilities, was amended to limit some of those immunity protections prospectively.¹ Although the amendment alters only a few lines of the statute, the increase in potential liability for health care professionals and facilities should be understood by all medical professionals and facilities moving forward in this pandemic. First, the EDTPA will no longer afford qualified immunity to health care professionals and facilities for the prevention of COVID-19, but it will continue to protect health care services that relate to the diagnosis and treatment of COVID-19. Second, the immunity that was provided for the complete assessment or care of a patient with a confirmed or suspected case of COVID-19 has been narrowed, and immunity is just provided for the patient's COVID-19 related assessment and care. Finally, the EDTPA used to provide immunity from any liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services. Now, the amended EDTPA no longer provides immunity for the arrangement for health care services. Importantly, the reduced immunity only applies for care and treatment from the date of enactment of the amended statute and not retroactively to March 7, 2020. It is also worth noting that the federal government may pass legislation to provide broad immunity, similar to New York's EDTPA prior to this amendment.

If you have any questions regarding the Act or its applications, please contact Mia D. VanAuken, Esq, at 518-786-2880 or mvanauken@fakslaw.com.

¹ For a full summary of the EDTPA, please click this link: <https://www.mlmic.com/wp-content/uploads/2020/04/Summary-of-NYS-Emergency-or-disaster-treatment-protection-act.pdf>