

LEGISLATIVE TORT REFORM AND OTHER REGULATORY CHANGES IN RESPONSE TO COVID-19

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By Luke Schmitt

The federal government and some states are acting to impose tort reform to provide immunity from liability to certain persons and entities engaged in activities to support and promote medical countermeasures against COVID-19.

In response to the COVID-19 pandemic, Congress passed the Families First Coronavirus Response Act (H.R. 6201). This law provides immunity from liability lawsuits to manufacturers or users of a personal respiratory protective device during the COVID-19 outbreak. For further information, please visit: <https://www.govinfo.gov/content/pkg/FR-2020-03-17/pdf/2020-05484.pdf>

The United States Department of Health and Human Services (“HHS”) has similarly issued a declaration stating that immunity from liability shall be granted for the manufacture, distribution, or administration of any “antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.” For further information, please visit: <https://www.govinfo.gov/content/pkg/FR-2020-03-17/pdf/2020-05484.pdf>

In the State of New York, in anticipation of the public health crisis and impending strain on the State’s health care system, the Governor, Andrew Cuomo, issued Executive Order Number 202.10 temporarily suspending or modifying any statute, local law, ordinance, order, rule, or regulation, of any state agency if compliance with such would prevent, hinder, or delay action necessary to cope with the COVID-19 emergency. That Executive Order further extends immunity from civil liability until April 22, 2020, to all physicians, physicians assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State’s response to COVID-19, unless it is established that an

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injury or death was caused by the gross negligence of the medical professional.

Neither the West Virginia Legislature nor any State agency has yet issued similar laws, regulations, or rules. We will continue to monitor this and other developments within the State of West Virginia. If you are a health care provider, health care facility, manufacturer of medical devices, or pharmaceutical company and have questions or concerns about the rapidly changing legal and regulatory environment in these uncertain times, we stand by ready to help you navigate these and any other issues you may face in combating this public health emergency.