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March 24, 2021

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

We, the undersigned members of the Health Coalition on Liability and Access and other concerned stakeholders with interests in the State of New York, write to voice our strong opposition to Assembly Bill A3397, a proposal which could be devastating to health care professionals and facilities in New York if enacted. We urge you to veto this harmful legislation.

The limited and targeted protection from liability included in Article 30-D of the Public Health Law, the Emergency or Disaster Treatment Protection Act, is crucial to the wellbeing of the medical community. The Act guarantees that our health care providers will not be held responsible for circumstances outside their control during the COVID-19 pandemic—circumstances that in some cases were the result of failed government action or inaction—allowing them to focus their time and energy on tackling the ongoing crisis. You and your fellow legislators recognized this when you originally passed the law to “promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state.” You also, wisely, took steps to ensure that health facilities and professionals would still be held accountable for egregious acts of negligence or misconduct. This balance ensured that Article 30-D truly met the needs of both the health care community and those they serve.

The New York health care community has faced a tremendous burden during the pandemic. In addition to dealing with the same concerns as all New Yorkers about the virus, they put themselves in harm’s way, risking their very lives, in order to try to save others and halt the spread of the virus. As a result, the toll on them has been unimaginable. To compound that toll, by subjecting them to the threat of a flood of litigation because the dire circumstances in which they had to function may have forced them to choose between the usual standard of care and saving as many lives as possible, is unjustifiable.

The legislature has already scaled back the protection originally included in the Emergency or Disaster Treatment Protection Act by denying protection for care that was severely disrupted by the pandemic but that did not directly involve COVID-19 patients. Please do not compound this situation by allowing Assembly Bill A3397 to become law and take away the very limited protection that remains.

Thank you for your thoughtful consideration of this request.

Sincerely,

American Academy of Otolaryngology- Head and Neck Surgery
American Association of Orthopaedic Surgeons
American Association of Neurological Surgeons
American College of Emergency Physicians
American College of Surgeons
American Medical Association
American Tort Reform Association
American Urological Association
Congress of Neurological Surgeons
The Doctors Company
ISMIE Mutual Insurance Company
MAG Mutual Insurance Company
Medical Professional Liability Association
MLMIC Insurance Company
New York State Neurosurgical Society
New York State Urological Society
NORCAL Group
Physicians Insurance A Mutual Company