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NY Repeals COVID-19 Liability Shield For Nursing Homes

By **Y. Peter Kang**

Law360 (April 7, 2021, 9:18 PM EDT) -- New York Gov. Andrew Cuomo has signed into law a bill stripping nursing homes of a legal shield granted at the beginning of the COVID-19 pandemic, after state lawmakers voted overwhelmingly to repeal the controversial legislation following allegations that the governor's administration undercounted nursing home deaths by as much as 50%.

Cuomo on Tuesday approved the legislation to repeal the Emergency or Disaster Treatment Protection Act, known as 30-D, which had largely immunized health care providers from criminal and civil liability since its passage in April 2020.

The liability shield had given broad immunity to hospitals, nursing homes, physicians and nurses except in cases of willful, reckless or criminal misconduct or gross negligence. The now-repealed law also made clear that any bad decisions stemming from staffing shortages or a lack of resources could not be considered gross negligence.

Critics of the liability shield had argued that it inappropriately protected corporate executives from being held accountable for deaths caused by neglect during the pandemic.

The bill signed into law on Tuesday was advanced by the New York Assembly on a 149-1 vote in March and was **unanimously approved** by the state Senate later that month. The law went into effect immediately but does not apply retroactively.

Cuomo is facing an impeachment inquiry following **sexual harassment allegations** and news that his administration vastly undercounted nursing home deaths. In January, New York Attorney General Letitia James said health officials reported that 6,645 people died in nursing homes as of Nov. 16, but **James said** at the time that those figures had been undercounted by as much as half.

In a call with legislators in February, a top Cuomo official said the administration, worried that the information was "going to be used against us," held back the death toll because of a federal probe under former President Donald Trump.

Assemblyman Ron Kim, a Democrat and co-sponsor of the bill to repeal 30-D, said in a statement Wednesday that the new law will help the families of those who died of the virus due to nursing home negligence.

"Finally, after a year of grief, setbacks, frustration and gaslighting by this [Cuomo] administration, thousands of families who lost loved ones begin to seek some form of real closure," he said. "Although this can never fill the void of losing a family member, it will create a path towards finally holding these for-profit operators accountable for their actions."

Buried deep in an April 2020 budget bill, 30-D had loosened record-keeping requirements and immunized health care providers from criminal and civil liability as long as they were responding to the COVID-19 emergency in good faith. Understaffed and undersupplied nursing home administrators were relieved when it passed, but as **deaths mounted**, patient safety advocates feared the state law would hide deadly neglect.

A number of lawmakers were quickly convinced the advocates were right, and **sought an immediate retroactive repeal** as in-facility nursing home deaths reached 6,000 in June. But, initially lacking political support for a repeal, the legislature settled for a **modest revision** in August.

--Additional reporting by Frank G. Runyeon and Anna Sanders. Editing by Alanna Weissman.

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