July 27, 2020

Governor Andrew M. Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

Re: S8835 (Sepulveda)
AN ACT to amend the public health law, in relation to amending provisions regarding health care facilities and professionals during the COVID-19 Emergency.

Dear Governor Cuomo:

I am writing on behalf of the New York American College of Emergency Physicians (New York ACEP) concerning S8835 (Sepulveda) which is currently before you for Executive Action. New York ACEP, representing over 3,275 emergency physicians in the State, is strongly opposed to this legislation. We respectfully urge you to veto S8835 (Sepulveda).

New York State ACEP recognizes and is grateful for your tremendous support during the COVID-19 worldwide pandemic. We applaud your leadership in including limitations on civil and criminal liability for health care professionals and health care facilities that provide treatment and services related to the COVID-19 state of emergency in the 2020-21 State Budget (Article 30-d of the Public Health Law, Emergency Disaster Treatment Protection Act).

As a statewide organization representing physician providers of emergency medical services, we strongly urge you to Veto S8835 (Sepulveda) which would significantly narrow these liability protections prospectively to apply only to health care professionals treating or diagnosing confirmed or suspected cases of COVID-19 in patients. The bill removes liability protection for a health care facility or professional “arranging” for health care services.

This legislation, if approved, will put health care providers at risk during a second wave or any future waves of the COVID-19 virus. It will make it that much harder for physician practices, hospitals and other health care facilities to recruit health care workers, expand capacity and provide care to all patients, with or without a diagnosis of COVID-19.

New York State is currently experiencing a decrease in new COVID-19 cases and hospitalizations. However, another surge in the virus is possible given the lack of effective treatments and a vaccine as the State reopens, as well as huge spikes in the virus in numerous states.

This legislation opens the floodgates to litigation arising from extraordinarily challenging circumstances and “second guesses” the decisions of emergency physicians and all frontline healthcare providers.
The liability protections in the current law are balanced by important limitations. They apply only to 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. Physicians, hospitals and other health care facilities are still liable for harm caused by willful or intentional criminal misconduct, gross negligence, reckless misconduct or intentional infliction of harm.

In response to the COVID-19 pandemic, you have recognized the need for as many trained, experienced, and qualified health care providers as possible. To ensure that these health care professionals are fully able to provide critical care to patients during the COVID-19 pandemic protections from liability must remain in place.

On behalf of New York ACEP and the patients that we serve, we respectfully ask you to Veto S8835 (Sepulveda).

Sincerely,

Keith E. Grams, MD FACEP
President