STATE OF NEW YORK

10621

IN ASSEMBLY

June 10, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Kim) -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the liability of residential health care facilities; to amend the judiciary law, in relation to requiring courts to afford protection of free speech to non-violent protesters; and to repeal article 30-D of the public health law relating to the emergency or disaster treatment protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 30-D of the public health law is REPEALED.

§ 2. Subdivisions 1 and 2 of section 2801-d of the public health law, subdivision 1 as amended by chapter 61 of the laws of 2009 and subdivision 2 as added by chapter 658 of the laws of 1975, are amended to read as follows:

1. Any residential health care facility that deprives any patient of said facility of any right or benefit, as hereinafter defined, shall be liable to said patient for injuries suffered as a result of said deprivation, except as hereinafter provided. For purposes of this section a "right or benefit" of a patient of a residential health care facility shall mean any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation, where noncompliance by said facility with such statute, code, rule or regulation has not been expressly authorized by the appropriate governmental authority. [~~No person who pleads and proves, as an affirmative defense, that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury for which liability is asserted shall be liable under this section.~~] For the purposes of this section, "injury" shall include, but not be limited to, physical harm to a patient; emotional harm to a patient; death of a patient; and financial loss to a patient.

2. Upon a finding that a patient has been deprived of a right or benefit and that said patient has been injured as a result of said depri-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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vation, [~~and unless there is a finding that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient,~~] compensatory damages shall be assessed in an amount sufficient to compensate such patient for such injury, but in no event less than twenty-five percent of the daily per-patient rate of payment established for the residential health care facility under section twenty-eight hundred seven of this article or, in the case of a residential health care facility not having such an established rate, the average daily total charges per patient for said facility, for each day that such injury exists. In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the patient, punitive damages may be assessed.

§ 3. The judiciary law is amended by adding a new section 39-c to read as follows:

§ 39-c. Free speech protections afforded to non-violent protesters. A court of competent jurisdiction in New York state shall afford any defendant in a criminal or civil action, immunity under the free speech provisions of the first amendment of the United States Constitution, and immunity under the free speech provisions of section eight of article one of the New York state constitution, if such defendant, without causing any harm to any other person or property, commits, promotes the commission of, and/or facilitates the commission of any offense under section 240.05 of the penal law, riot in the second degree; section 240.06 of the penal law, riot in the first degree; section 240.08 of the penal law, inciting to riot; section 240.10 of the penal law, unlawful assembly; section 240.15 of the penal law, criminal anarchy; section 240.20 of the penal law, disorderly conduct; and/or section 240.35 of the penal law, loitering.

§ 4. This act shall take effect immediately.