

ALBANY REPORT

Legislative developments impacting the New York medical
and dental professional liability insurance marketplace

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NEW YORK STATE ENACTS 2024-25 BUDGET

The New York State Legislature completed work on the budget on April 20, almost three weeks after the April 1 state fiscal deadline. Governor Hochul and the Legislature agreed to a state budget for the 2024-25 state fiscal year that will total \$237 billion, an increase from the Governor's proposed \$233 billion executive budget. The final budget contains six items of interest to the NYS medical community.

- First, and most significantly, the enacted budget continues, with no modifications from prior years, the Physician's Excess Medical Malpractice Program, commonly known as the "Section 18 Program." The Section 18 program will be funded with \$78.5 million.
- Second, the budget includes a one-year extension of the New York State Department of Financial Services (DFS) Superintendent's authority to "set and establish" rates for physician and surgeon medical professional liability (MPL) insurance, both primary and excess.
- Third, the budget supports the New York State Medical Indemnity Fund with an appropriation of \$52 million.
- Fourth, the final budget did **NOT** adopt the Governor's proposal to lower the current NY 9% judgment interest rate to the federal market rate currently used by 26 other states. This would have helped reduce the excessively prohibitive cost of MPL insurance in New York.
- Fifth, the Committee on Physician Health has been restored and fully funded at the yearly amount of \$990,000. The Governor's proposed budget had eliminated the committee.
- Sixth, this year's Grieving Families Act (GFA) bill, which was inserted by the Senate in their proposed budget, is **NOT** contained in the final budget. However, this legislation will almost definitely be taken up by both houses later this session.

POST-BUDGET LEGISLATIVE SESSION

With completion of the state budget, Albany's focus shifts to the remainder of the regular legislative session, which is scheduled to adjourn on June 6. Post-budget items are certain to include various bills the plaintiff's bar always advances that would negatively impact the New York MPL insurance climate. Without a doubt, the most significant of such liability-expanding legislation for our policyholders will be the 2024 version of the GFA, which expands the damages available in wrongful death actions.

The current version of the GFA, [SB8485/AB09232](#), is the same as last year's GFA bill that was vetoed by the Governor on December 29, 2023. The Governor noted in her Veto Message No. 151 of 2023 that the Legislature "once again

passed a bill that does not create the requisite balance and again introduces the potential for significant unintended consequences.” Despite her veto last year and her veto of the 2022 GFA bill, this year’s GFA is almost certain to be heavily supported by the Legislature.

MLMIC will renew its collaboration with our healthcare partners to lobby against the GFA, since it still unreasonably expands liability without any counterbalancing reforms of the MPL insurance system in New York. In addition, MLMIC will continue to oppose any other bill expanding liability for our policyholders while also seeking sensible tort reform to balance the extremely unlevel playing field in New York when it comes to MPL lawsuits.

EMPIRE HEALTH PLAN REIMBURSEMENT FOR OUT-OF-NETWORK PROVIDERS

Legislation has been introduced this session to mitigate some of the negative impacts on healthcare providers and facilities as a result of the New York Empire Plan’s (the health plan for New York State public employees, hereinafter “Empire Plan”) decision in January of 2022 to no longer be subject to the DFS surprise billing regulation’s independent dispute resolution (IDR) process, which awards the usual and customary rates for comparable healthcare services to out-of-network providers. The Empire Plan took this action after the federal government passed the “No Surprises Act.” In effect since January 1, 2022, the No Surprises Act applies to the determination of out-of-network rates when a “specified state law” does not apply. The federal No Surprises Act uses a different benchmark for its rate determination in its billing dispute resolution process. The application of the federal benchmark results in the awarding of significantly lower rates to providers.

The Empire Plan took the position that, since it is self-funded by the State (until 2010, the Empire

Plan purchased health insurance for Empire Plan enrollees), the DFS IDR process enshrined in law and applicable to health insurance plans in New York does not apply to the Empire Plan. (As a general matter, self-funded health plans are not regulated by New York State but rather by the federal Employee Retirement Income Security Act of 1974, also known as ERISA.) This has led to out-of-network physicians and medical providers receiving payment that is up to 80% less than the usual and customary rate for care rendered to Empire Plan enrollees.

Two legislative bills have been introduced. [SB5638/AB7120](#) would amend the New York State Financial Services Law to include the Empire Plan within the state law’s IDR process under DFS oversight. This would address the current inadequate rate for out-of-network medical services, which is a significant financial blow to these providers.

[SB5639A/AB7055](#) ensures that Empire Plan enrollees who are not part of an approved collective bargaining agreement will not have their health insurance benefits diminished by the New York State Civil Service Commission. This matter is also in litigation in the state court system.

In *Joseph v. Corso* (Index No. 902227-22, Albany Supreme Court, July 13, 2023), the Court ruled that the State’s use of the federal No Surprises Act to resolve out-of-network reimbursement disputes is rational and not contrary to any applicable statutes or regulations. The plaintiffs have appealed this decision to the New York Appellate Division, Third Department. The appeal is currently pending with the oral argument not yet scheduled.

MLMIC will continue to monitor this matter in both the legislative and court arenas and report to our policyholders on further developments.



Questions?

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