

ALBANY REPORT

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

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Governor Hochul's 2022-23 New York State Executive Budget

New York Governor Kathy Hochul has just released her \$216 billion executive budget, which will serve as the basis for the final New York state budget. This proposed budget contains six items of interest to the NYS healthcare provider community.

- First, and most significantly, the executive budget contains a substantial modification of the Physician's Excess Medical Malpractice Insurance Program, commonly known as the "Section 18 Program." The Governor proposes to require Section 18-eligible physicians and dentists to pay the entire premium for excess medical professional liability (MPL) coverage and then be reimbursed by the state for their up-front payment in two equal installments, the first to be paid one year after the policy period began (July 1, 2023) with the second installment reimbursement payment made a year later (July 1, 2024).

While the amount appropriated to the Section 18 program for fiscal year 2022-23 is restored in the executive budget to its previous amount of \$102.1 million, this proposed mechanism to require an up-front payment of the full premium by Section 18 physicians and dentists is unfair and burdensome to our policyholders. For that reason, MLMIC will join our medical partner societies in advocating for eliminating this proposed new payment mechanism from the proposed budget and restoring the prior year's language for Section 18. It is our position that physicians and dentists should not have to bear any of the financial burden for this program, which was enacted because of New York's exorbitant MPL payouts. Since the disproportionate nature of New York's MPL costs has not abated, with New York remaining far and away the state with the highest annual payouts (\$661 million in 2019, over \$260 million more than the next highest state), there is no reason for the program to be modified.

- Second, the proposed budget includes a one-year extension of the Department of Financial Services (DFS) Superintendent's authority to "set and establish" primary and excess rates for physicians' and surgeons' MPL insurance. It is very likely that this provision will be passed with bipartisan support.
- Third, the executive budget supports the NYS Medical Indemnity Fund (MIF) with a proposed appropriation of \$52 million.

- Fourth, the 2022-23 executive budget would place New York in the **Interstate Medical Licensure Compact**. The compact, which currently has 36 states as members, is designed to allow doctors and nurses to easily relocate to and practice in New York, since a medical license from any of the compact member states is recognized by all of the other compact member states.
- Fifth, the executive budget would establish reimbursement parity for telehealth. If enacted, this could incentivize greater use of telehealth in New York by making the statutory changes necessary to require commercial health plans, including those in Medicaid, reimburse providers for services delivered through telehealth on the same basis and at the same rate as services delivered in person.
- Sixth, the proposed executive budget would lower the current 9% judgment interest rate to the federal market rate, which 26 other states currently use for their judgment interest rate. This would help reduce the excessively high costs of New York's MPL system.

The Legislature will now conduct public hearings on each portion of the executive budget, including Health, Education, Transportation, Economic Development/Taxes and other programmatic areas. Those hearings will conclude in late February. In March, the Assembly and Senate will pass their own versions of the budget, followed by negotiations between the two houses and the Governor in order to enact a complete state budget by the deadline of April 1.

Political Developments

Governor Hochul is proposing her first executive budget in unique fiscal circumstances. With the state flush with cash as a result of federal aid and much higher tax revenues than anticipated, it is, in fact, the first New York state executive budget that longtime Albany observers can remember with a five-year projection that does NOT contain a future budget gap. This is very advantageous for the new Governor, who is also running for election for her first full four-year term. Governor Hochul reported having over \$21 million cash in hand for her campaign as of January 15, and polls place her with a very large double-digit lead over the two other candidates presently in the Democratic gubernatorial primary.

Given the robust state finances and Governor Hochul's collaborative approach with the Legislature, in contrast to Governor Cuomo's more confrontational approach, the budget talks are expected to be less contentious than prior years. However, there are always areas of disagreement given the broad nature of the budget that determines how every state agency and program is financed and operated.



Questions?

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