

ALBANY REPORT

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

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NEW YORK 2024 REGULAR LEGISLATIVE SESSION CONCLUDES

The regular session of the New York State Legislature adjourned on June 8. While the Legislature is not currently scheduled to return until January 2025, there is always the potential for it to reconvene prior to the end of the year. One item that could be brought up in a special session later this year would be legislation to implement a revenue source for the Metropolitan Transportation Authority (MTA) to replace the congestion pricing plan that the Governor suspended.

Grieving Families Act Again Passes Both Houses

Although the New York State Trial Lawyers Association (NYSTLA) promotes several liability-expanding bills in each legislative session, the last three legislative sessions have seen the NYSTLA-referenced “Grieving Families Act” (commonly called the “GFA”), which would greatly expand damage awards in wrongful death cases and dominate the legislative battle over the expansion of medical professional liability. In 2022 and 2023, MLMIC, working in coordination with our healthcare and insurance industry partners in opposition to these measures, was able to obtain a gubernatorial veto of the GFA bills passed by both houses. The 2024 version of the GFA (GFA 3.0) passed both houses and will be sent to the Governor sometime before the end of the year for her consideration.

Despite some minor tweaks from the 2022 and 2023 GFA bills, the 2024 GFA 3.0 legislation has kept the provision to add a new component of damages for “grief or anguish.” Since this provision was the sole reason for the actuarial firm Milliman finding that these bills would increase medical professional liability (MPL) insurance premiums by up to 40 percent, the GFA 3.0 bill is just as damaging to the New York MPL system as the two prior bills would have been if enacted into law.

More specifically, the GFA 3.0 would do the following:

1) greatly expand the type of damages that can be

awarded in wrongful death cases through the addition of damages for “grief or anguish” and for “loss of companionship”; 2) increase the number of persons who can bring a wrongful death case and share in the damages; 3) increase the statute of limitations for bringing such an action; and 4) apply these new, increased damages retroactively to any deaths occurring on or after January 1, 2020.

MLMIC has already begun to coordinate with our healthcare organization partners to begin the process of again seeking a veto from the Governor’s office, which must receive this bill from the Legislature and act on it before it becomes law.

The NYSTLA also attempted to get another liability-expanding bill passed in both houses. [SB 5188/AB 2127](#) would permit a plaintiff to recover against a third party defendant in certain cases. The Governor vetoed an identical bill in 2019. MLMIC quickly acted and informed our healthcare allies and various organizations of this bill’s advancement. As a result, while the bill did pass the Senate, it died in the Assembly.

Other Legislative Issues

MLMIC continues to support legislation that would reduce the risks involved with practicing medicine and thereby allow healthcare practitioners to provide the best possible care to their patients.

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One of these legislative proposals is medical malpractice peer review and quality improvement programs for qualifying medical group practices, **SB 3450**. MLMIC continued its longtime advocacy for these programs by supporting this bill and its provisions for strong confidentiality and immunity protections under New York law. Unfortunately, this bill was strongly opposed by the NYSTLA and did not advance in the Senate.

Another initiative, the affirmative medical liability reform legislation, consists of the following four bills:

- **SB 1052** would require the Department of Financial Services to conduct a study of insurance products (primarily annuities) that could be effectively used to finance a plaintiff's future economic damages.
- **SB 1053** would expand Medical Indemnity Fund (MIF) eligibility to include all neurological injuries, not just those that are birth-related.

NEW YORK STATE DEPARTMENT OF HEALTH SUSPENSION OF THE MEDICAL INDEMNITY FUND

The Medical Indemnity Fund (MIF) is a state fund established in 2011 that pays the future medical expenses of neurologically impaired infants who sue and obtain either a settlement or court award. The MIF is intended to reduce MPL costs in these types of cases, especially for hospitals and obstetricians-gynecologists.

On May 2, the New York State Department of Health (DOH) suddenly announced on their web page that the MIF was not accepting any new enrollees pursuant to New York Public Health Law section 2999-i(6), which mandates suspension of the MIF for new enrollees if the fund's liabilities exceed 80 percent of its assets. It must be noted that the May 2 suspension came not even two full weeks after the New York State budget, which included a \$52 million appropriation for the MIF, was enacted on April 20.

After a few weeks of frenzied lobbying and the introduction of various bills to temporarily resolve the MIF suspension, the Governor announced on May 24 that her office would transfer \$58 million

- **SB 1015/AB 5316** would extend the confidentiality protections in QA proceedings to all participants, including MPL defendants.
- **SB 1024** would enact the following MPL reforms:
 - a. Expand the limitation of liability law to include economic damages.
 - b. Create a robust Affidavit of Merit requirement with full disclosure of expert witnesses in MPL actions.
 - c. Limit the recovery of medical damages in MPL actions to actual healthcare costs incurred.

These affirmative bills are meant to help the entire healthcare industry counter the unfortunate trend in recent years of the Assembly and Senate supporting much of the NYSTLA's legislation. As described above, this trend has proven to be an alarming development for physicians, dentists, hospitals, and all other participants in the New York State healthcare sector.

from the state treasury to the MIF in order to allow the DOH to open the MIF back up to new enrollees (neurologically impaired infants who have recently obtained a monetary award for their injuries). The DOH subsequently announced on June 5 that the MIF was now open to new enrollees.

While the MIF's funding sufficiency was temporarily resolved, this episode raises troubling questions over the fund's long-term existence. MLMIC, together with the entire medical community, strongly supports the MIF as a much-needed tort reform mechanism. Given New York's unfortunate status as the costliest state in the U.S. for MPL costs, the MIF is a necessary program, and MLMIC will be working with our healthcare partners and state government policymakers to ensure it remains viable.



Questions?

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