

ALBANY REPORT

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

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New York State Enacts 2022-23 Budget

The New York State Legislature completed work on the budget on April 8, one full week after the April 1 state fiscal deadline. Governor Hochul and the Legislature agreed to a state budget for the 2022-23 state fiscal year that will total \$220 billion, a significant spending increase from the Governor's proposed \$216 billion executive budget. The final budget contains four items of interest to the New York State medical community, with two items that were in the Governor's proposed budget rejected by the Legislature and not included in the final enacted state budget.

- First, and most significant to the medical community, 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 Governor had originally proposed to require Section 18-eligible physicians and dentists to pay their premium for excess medical malpractice coverage and then be reimbursed by the State in two equal installments over two years. Her 30-day budget amendments modified this proposal to provide for the State to pay the Section 18 excess insurance companies in two equal installments spread out over two years. On behalf of our policyholders, MLMIC opposed both proposals and worked in concert with MSSNY and our other medical partner societies in advocating for restoring the full funding for the program without any modifications so that the Section 18 excess insurance policyholders did not have to bear any of the financial burden for this program. We are grateful to the Governor and Legislature for the restoration and continuation of this program.
- Second, the 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' medical professional liability insurance.
- Third, the budget supports the **NYS Medical Indemnity Fund (MIF)** with an appropriation of \$52 million. The MIF was designed to provide a funding source for future healthcare costs of "qualified plaintiffs," as defined by law, who suffered birth-related neurological injuries due to medical malpractice during a delivery admission.

- Fourth, the final budget establishes reimbursement parity for telehealth. This is expected to incentivize greater use of telehealth in New York. This provision makes the required statutory changes to implement reimbursement parity for telehealth services by mandating that commercial health plans, including those in Medicaid, reimburse physicians and other healthcare providers for services delivered through telehealth on the same basis and at the same rate as services delivered in person. This telehealth payment parity measure will expire on April 1, 2024, unless extended. In addition, the DFS shall work with the NY Department of Health to develop and issue a report on the impact of reimbursement parity for telehealth. This report shall be submitted to the Governor and legislative leaders by December 31, 2023.
- Fifth, the final budget does **not** place New York in the **Interstate Medical Licensure Compact**. While the Governor proposed that New York join the Compact, the Legislature emphatically rejected this provision, and it did not make it into the enacted budget.
- Sixth, the final budget did **not** adopt the Governor's proposal to lower New York's current 9% judgment interest rate to the federal market rate, as 26 other states currently use for their judgment interest rate. This would have helped reduce the excessively prohibitive costs of New York's medical professional liability insurance system.

Political Developments

Within days after the state budget was completed, Albany was rocked by the arrest and indictment of Lieutenant Governor Brian Benjamin on April 12. Mr. Benjamin resigned as Lieutenant Governor the very next day. Governor Hochul now has to determine whether to appoint a new Lieutenant Governor. If she does appoint someone, the next urgent task is to figure out whether she can get her appointment on the ballot for the June 28 Democratic primary.

Meanwhile, the Legislature will take a mid-session break and resume the session later this month. Attention will now turn to post-budget items, which include various bills the plaintiff's bar always advance that would negatively impact the New York medical professional liability climate. MLMIC will continue to oppose these bills and will collaborate with our medical partner organizations to advocate

against these harmful measures while also seeking sensible tort reform to balance the extremely unlevel playing field in New York when it comes to medical malpractice lawsuits.

Turning to the June 28 primary elections confronting both Democratic and Republican candidates seeking state offices this year, there are several compelling story lines. Governor Hochul's two main opponents in the Democratic primary for Governor are Congressman Tom Suozzi from Long Island and NYC Public Advocate Jumaane Williams from Brooklyn. Congressman Suozzi is running against Governor Hochul from the right as a moderate Democrat, while Public Advocate Williams is running against her from the left, having won the backing of the Working Families Party. Polls to date have shown Governor Hochul with a comfortable lead over both Suozzi and



Williams. One wild card is whether former Governor Cuomo, who resigned last August in the wake of numerous sexual harassment allegations, will jump into the ring as an independent candidate.

On the Republican side of the gubernatorial contest, there are four individuals vying for the nomination in the June 28 Republican gubernatorial primary election. The front-runner is Congressman Lee Zeldin from Long Island, followed in no particular order by former Westchester County Executive Rob Astorino (who ran against Governor Cuomo in 2014), Andrew Giuliani (son of former NYC Mayor Rudy Giuliani), and businessman Harry Wilson from Westchester (who came within a couple of points of defeating Comptroller Tom DiNapoli in 2010).

As for the Legislature, there are several Assembly and Senate seats with primaries, and most of these primaries are among Democrats vying for their party's nomination in these primary elections. The underlying theme in these legislative Democratic primaries is the emergence of an active left wing challenging more centrist Democrats. 2022 promises to be an interesting election year in New York State politics.



Questions?

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