

ALBANY REPORT



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

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NEW YORK ENACTS 2023-24 BUDGET

The New York State Legislature completed work on the budget on May 3, a little over one month after the April 1 state fiscal deadline. Governor Hochul and the legislature agreed to a state budget for the 2023-24 fiscal year that will total \$229 billion, a slight spending increase from the Governor's proposed \$227 billion executive budget. The final budget contains five items of interest to the NYS medical community.

- 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 Section 18 Program will be funded at \$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" primary and excess rates for physician and surgeon Medical Professional Liability (MPL) insurance.
- Third, the budget supports the New York State Medical Indemnity Fund with an appropriation of \$52 million.
- Fourth, the final budget requires private physician practices and groups to submit notice and disclose to the New York State Department of Health any "material transactions" the practice or group will be undertaking (such as acquisitions, mergers, or similar actions). This provision is contained in Part M of SB4007C, pages 118-122. These notice and disclosure requirements do not apply to transactions less than \$25 million.
- Fifth, the final budget did not adopt the Governor's proposal to lower New York's current nine percent judgment interest rate to the federal market rate that 26 other states currently use. This would have helped reduce the excessively prohibitive costs of New York's MPL system.

POST-BUDGET LEGISLATIVE SESSION

With completion of the state budget, Albany's focus shifts to the remainder of the regular legislative session that is scheduled to adjourn on June 8. Post-budget items are certain to include various bills the plaintiff's bar always



Questions?

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advances that would negatively impact the New York MPL climate. Without a doubt, the most significant of such liability-expanding legislation for our policyholders would be a new bill that expands the damages available in wrongful death actions.

While the Grieving Families Act (GFA) of 2022 was vetoed by the Governor in late January of this year, the new bill, **SB6636**, is certain to be heavily supported by the legislature. MLMIC will renew its collaboration with our healthcare partners to lobby against SB6636, since it still unreasonably expands liability without any counterbalancing reforms of the MPL 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 was introduced this session to mitigate some of the negative impacts on healthcare providers and facilities as a result of the New York Empire Plan (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 that awards roughly 80% of 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, which

took effect on 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 Empire Plan took the position in January of 2022 that, since it is self-funded by the state (until 2010, the Empire Plan purchased health insurance for its enrollees), the DFS IDR process enshrined in law and applicable to health insurance plans in New York does not apply to the self-funded 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 law. This has led to out-of-network physicians and medical providers receiving payment for care rendered to Empire Plan enrollees that is up to 80% less than their prior payments for the same care.

The legislative bills involved are **SB5638** and **SB5639A**. SB5638 would amend the New York State Financial Services Law to include the Empire Plan within the state law’s IDR process under DFS oversight that generally awards 80% of the usual and customary rate for out-of-network medical services. SB5639A 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 New York Supreme Court, Albany County. MLMIC will continue to monitor this matter in both the legislative and court arenas and report to our policyholders on further developments.

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