MLMIC
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# ALBANY REPORT

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

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## GRIEVING FAMILIES ACT LEGISLATION

As you may recall, there was a bill commonly known as the "Grieving Families Act" (GFA) that passed both houses of the New York State Legislature in 2022 but was vetoed by Governor Hochul in late January of this year. While we are thankful for the readers of this report who sent messages to the Governor last year urging a veto and were supportive of MLMIC's successful advocacy efforts against last year's bill, a new version of the GFA (bill numbers **SB 6636/AB6698**, hereinafter "GFA 2.0") was passed by both houses in June of this year. GFA 2.0 has not yet been delivered to the Governor for her approval or veto.

MLMIC has renewed its collaboration with its healthcare partners to lobby against GFA 2.0 since it still unreasonably expands liability without any counterbalancing reforms of the medical professional liability system in New York.

Although supporters of GFA 2.0 point to the fact that the new bill made changes to the original GFA in recognition of the Governor's veto, the fact remains that the new damages provision for "grief or anguish" suffered by surviving family members is exactly the same as was contained in the original GFA bill. Since an actuarial study found that allowing "grief or anguish" noneconomic damages in the original GFA could result in a 40 percent increase in medical professional liability premiums, and this damages provision remains unchanged in GFA 2.0, the huge cost increase to physicians, hospitals and all other payers of medical professional liability premiums remains the same.

MLMIC maintains that vetoing GFA 2.0 would be consistent with the Governor's stated focus on three things as reported by New York State of Politics on August 22, 2023 ("Hochul Focuses on Migrant Work Authorizations in Upstate"); how to make New York more affordable, how to make it more livable and how to make it safer. Raising the costs of medical professional liability by almost 40 percent will certainly not make New York more affordable, nor will it make it more livable or safer given the very possible closure of safety net hospitals and distressed healthcare facilities, in addition to causing more physicians and healthcare providers to decide that practicing medicine in New York is simply too costly and, therefore, leave New York.

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**Questions?**
**mcraw@mlmic.com**
Marc Craw is an attorney with MLMIC Insurance Company.

MLMIC firmly believes a veto is necessary in order to assist the Governor in her efforts to bring the various stakeholders and Legislature together to commence a study and analysis of the fiscal impact of GFA 2.0 and then work together with all of the involved parties to reach a consensus on balanced legislation. We urge all of our policyholders, distribution partners and our stakeholders to send messages to the Governor recommending a veto of GFA 2.0. If you are a MSSNY member, **click here** for more information. For those of you who are not MSSNY members, you can go to **https://www.notonemorecosthike.org/** and click on "Contact the Governor Now."

## EMPIRE HEALTH PLAN REIMBURSEMENT FOR OUT-OF-NETWORK PROVIDERS

Albany Report 1 of this year summarized the legislative activity and litigation intended to eliminate, or at least 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 2022 to no longer be subject to the DFS surprise billing regulation's independent dispute resolution (IDR) process that awards roughly 80 percent of usual and customary rates for comparable healthcare services to out-of-network providers.

The Empire Plan took the position in January of 2022 that since it is self-funded by the State, the DFS IDR process does not apply to it (as a general matter, self-funded health plans are not regulated by New York State but rather by the federal ERISA 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 percent less than their prior payments for the same care. The following is an update on developments in both the legislative front and in the courts.

First, as to legislative action, the legislative bills to remedy this situation (**SB5638** and **SB5639A**) did not advance in either house of the New York State Legislature in this year's session. These bills can be acted on in the 2024 legislative session.

Second, in the courts, the New York Supreme Court (Albany County) issued a decision on July 13. Acting Supreme Court Justice McDonough ruled that the DFS surprise billing regulation IDR process is inapplicable to the Empire Plan since the New York statute establishing the DFS IDR process specifies certain health plans as those subject to the DFS regulations, and the Empire Plan is not one of those subject to regulation. The plaintiff's Empire Plan enrollees and out-of-network physicians have filed an appeal following this Albany County Supreme Court decision to the New York State Appellate Division, Third Department. MLMIC will continue to monitor this matter in both the legislative and court arenas and report to our policyholders on further developments as they occur.

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