

ALBANY REPORT

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

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New York 2021 Regular Legislative Session Concludes

Overall Legislative Issues

The regular session of the New York State Legislature adjourned on June 11. While there is always a potential for them to reconvene prior to the end of the year, the Legislature is not currently scheduled to return until January 2022.

This year was quite different from last in terms of the number of bills passed by both houses. Last year, in the midst of the COVID-19 pandemic, with New York State business and government activities heavily limited by restrictions, the Legislature only passed 414 bills. In comparison, they passed around 900 bills in 2019. This year, while the Capitol was still off limits to the public, with only legislators, Governor Cuomo's office, and staff allowed within the Capitol complex, the Legislature passed 892 bills.

It should also be noted that this year saw even greater one-party dominance of both the Assembly and Senate by Democratic majorities, with each legislative majority enjoying a two-thirds supermajority as a result of the 2020 elections. This means that the Legislature can override any veto by the Governor, resulting as a practical matter in the Legislature enjoying more leverage in its relationship with the Governor than in past years.

What this meant for the New York medical professional liability (MPL) insurance business was even more of an onslaught of extremely detrimental legislation put forward by the New York State Trial Lawyers Association (NYSTLA). Among the NYSTLA's bills receiving serious consideration were measures to expand damages in wrongful death cases that would, according to respected estimates, raise MPL premiums by double digits; two bad faith bills that would cost the overall insurance industry approximately \$7 billion; and a large expansion of the General Business Law consumer protection statute.

Working with our healthcare and insurance industry partners in opposition to these measures, most of the NYSTLA bills did not advance. Unfortunately, three of its bills did pass both houses.

- One bill, A2199/S473, would impose pre-judgment interest on a defendant when the plaintiff loses their motion for summary judgment, the appeals court subsequently reverses the denial of summary judgment, and the plaintiff wins a monetary award. While the pre-judgment interest would only be imposed from the

time the plaintiff's summary judgment motion is denied at the lower court, bear in mind that the interest rate on judgments is set by current New York law at the punitive amount of 9 percent.

- The second bill, S7052/A8041, would amend the current required disclosure of insurance policies in litigation discovery to include such extraneous items as the insurance application and contact information for the adjuster who handles claims for the defendant in litigation.
- The third bill, S7093/A8040, would expand the current hearsay exception for employees' statements against their employers' interests from the high standard of only allowing such statements when the employer authorizes the employee to speak on the matters in issue to a much broader standard of allowing any statements uttered by the employee while acting within the scope of their employment.

MLMIC will be seeking vetoes on all three of these bills.

If the reader is interested in joining a grassroots campaign to weigh in against these three harmful bills, the Medical Society of the State of New York (MSSNY) has established and operates the following link for use in contacting the Governor's office regarding these three bills: It is **Urge Governor Cuomo to VETO Regressive Liability Bills (p2a.co)**. MLMIC thanks MSSNY for offering this link to our policyholders.

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. One of these legislative proposals is for medical malpractice peer review and quality improvement programs for qualifying medical group practices, S 1801 Rivera/A1164 Gottfried. MLMIC continued its longtime advocacy of these programs with our support of 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 the bill did not pass either house.

The increased receptivity of the new supermajorities in the Assembly and Senate to support several of the NYSTLA's proposed legislative measures is an alarming

development for physicians, dentists, hospitals, and all other participants in the New York State healthcare sector and is a development that needs to be closely monitored and opposed.

MLMIC Insurance Company is committed to continuing to work with all our healthcare organization partners in developing and advocating for robust legislation that would reform New York's one-sided civil justice system in the MPL arena.



Questions?

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