

# ALBANY REPORT

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

NUMBER 01 | 2021

## Governor's 2021-22 NYS Proposed Executive Budget

**Governor Cuomo has just released his \$193 billion Executive Budget, which will serve as the basis for the final State budget. This proposed budget contains four items of interest to the NYS healthcare provider community.**

- First, and most significantly, the Executive Budget contains a substantial modification of the Physician's Excess Medical Malpractice Program, commonly known as the "Section 18 Program." The Governor proposes to require Section 18-eligible physicians and dentists to pay half of the premium for excess professional liability coverage, to be paid by these physicians and dentists in 12 monthly installment payments, or in another manner as agreed to by the physician or dentist. \$52 million is the amount provided in the budget for the State portion of the other half of the amount necessary to fund the Section 18 premiums.

MLMIC will join our medical and dental partner societies in advocating for restoring the full funding for the program so that the Section 18 excess insurance policyholders do not have to bear any of the financial burden for this program, which was enacted because of New York's extremely high professional liability payouts. Since the exorbitant nature of New York's professional liability costs has not abated, with New York remaining far and away the state with the highest annual payouts (\$661 million in 2019, over \$260 million more than the next-highest state), there is no reason for the program to be modified.

- Second, the proposed 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' professional liability insurance. It is very likely that this provision will be passed with bipartisan support.
- Third, the Executive Budget supports the NYS Medical Indemnity Fund with a proposed appropriation of \$52 million.
- Fourth, the 2021-22 Executive Budget puts forth proposed modifications to the New York State Office of Professional Misconduct (OPMC). These measures would essentially dilute, and in some cases eliminate, certain provisions of the current law that provide needed and crucial due process protections for physicians faced with a complaint filed at the OPMC.

The Legislature will now conduct public hearings on each portion of the Executive Budget, such as Health, Education, Transportation, Economic Development/Taxes, and other programmatic areas. Those hearings will conclude on February 23. In March, the Assembly and Senate will pass their own versions of the budget, followed by negotiations between the two houses and the Governor, in order to enact a complete State budget by the deadline of April 1.

## Political Developments

Governor Cuomo is proposing his Executive Budget in unique fiscal circumstances, with the pandemic having substantially reduced State revenues due to lower economic activity. As a result, the Governor's budget contains two options, with the one to be chosen depending on whether New York receives \$15 billion in state and local aid from the federal government in a stimulus package proposed by President Biden.

If New York receives the federal aid of \$15 billion, the proposed cuts presently contained in the Executive Budget would not take effect. However, if New York does not receive aid in that amount, the proposed cuts would take effect if the Legislature agreed to them.

In the second scenario of cuts, the Governor also proposes revenue measures such as the legalization of adult-use marijuana, mobile sports betting with additional New York casinos, and an increase in the

personal income tax rate for New Yorkers earning \$5 million or more per year.

A significant new factor looming over the upcoming budget talks and the entire 2021 legislative session is the new makeup of the State Legislature. The Democrats now enjoy a "supermajority" (over two-thirds of the members in each house belong to the Democratic caucus), which provides them with additional leverage with the Governor in negotiations since they can override his veto power. One area that already appears to be a matter of contention is new and increased taxes, with both the Assembly Democratic leaders and Senate Democratic leaders expressing support for a variety of tax proposals that would increase State revenue.



## Questions?

Marc Crow is an attorney with Fager Amsler Keller & Schoppmann, LLP.

[mcrow@fakslaw.com](mailto:mcrow@fakslaw.com)

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