

ALBANY REPORT

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

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New York State Enacts 2021-22 Budget

The New York State Legislature completed work on the budget on April 7, almost one full week after the April 1 state fiscal deadline. Governor Cuomo and the Legislature agreed to a state budget for the 2021-22 state fiscal year that will total \$212 billion, a significant spending increase from Governor Cuomo's proposed \$193 billion executive budget.

The bulk of this new spending consists of significant federal monetary relief provided directly to the state in the form of \$12.5 billion, coupled with other targeted federal relief for the COVID-19 impact on education, healthcare, and municipal services. In addition, the final budget contains roughly \$3.5 billion in the form of increased and new taxes.

The 2021-22 budget contains four items of interest to the NYS medical professional liability insurance market:

- First, and most significantly, the enacted budget continues, with no modifications from prior years, the Physicians' Excess Medical Malpractice Program, commonly known as the "Section 18 Program." The Governor had proposed to require that Section 18-eligible physicians and dentists pay half of the premium for excess medical malpractice coverage.

On behalf of our policyholders, MLMIC opposed this proposal 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 restoring and continuing this program.

- Second, the budget includes a one-year extension of the Department of Financial Services (DFS) Superintendent Lacewell's authority to "set and establish" primary and excess rates for physicians' and surgeons' medical malpractice insurance.
- Third, the budget supports the NYS Medical Indemnity Fund (MIF) with an appropriation of \$52 million.
- Fourth, the final budget does not contain any of the proposed Executive budget modifications to the New York State Office of Professional Medical Conduct (OPMC). These measures would have essentially diluted — and, in some cases, eliminated — certain provisions of the current law that provide needed and crucial due process protections for physicians faced with a complaint filed at the OPMC.

Political Developments

With the state budget complete, 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 plaintiffs' bar always pushes that would negatively impact the New York medical professional liability climate. MLMIC will continue to oppose these bills and will work 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.

As for the Legislature and Governor, attention will now turn to the twin investigations against Governor Cuomo brought by the New York Attorney General James and the New York State Assembly impeachment inquiry. While the Attorney General's probe is focused on the various sexual harassment allegations recently brought against the Governor, the Assembly impeachment inquiry is much broader. The Assembly is investigating the sexual harassment allegations, the allegations of misrepresentation and falsification regarding nursing home deaths due to COVID-19, the allegation of possible safety violations in building the Mario Cuomo Bridge, and the allegation of misuse of the Governor's public staff for private work on his recent book.

As the Governor addresses these allegations, the Legislature has been reasserting itself in this 2021 legislative session. In mid-March, both houses enacted legislation curbing the Governor's executive powers regarding the COVID-19 pandemic by increasing legislative oversight with respect to future executive orders governing the state pandemic response.

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. It remains to be seen how this fully plays out in the remainder of the 2021 session, but there does appear to be a shift in power between the executive and legislative branches as compared to the previous 10 years of the Governor's administration.



Questions?

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