



OPPOSITION MEMORANDUM

S.4080 (DeFrancisco)—In Senate Judiciary Committee

June 2, 2017

TO: Members, New York State Legislature

This legislation would modify the current statute of limitations by converting it to a “discovery” statute—delaying the commencement of the statutory period until the discovery of the act. **The Healthcare Association of New York State (HANYS) strongly opposes this legislation.**

Among other things, the legislation would allow a lawsuit to be filed up to *seven years* after the alleged negligent act. As with many other details in the bill, this provision would create serious document retrieval, credibility and witness availability issues. This bill would also allow a medical malpractice lawsuit to be brought based on an act or omission occurring up to seven years *before the effective date of the bill*. As a result, this legislation could essentially nullify the statute of limitations for any medical malpractice action based on events occurring during the seven-year period.

State elected officials and representatives from the Senate, Assembly, and Governor’s office along with stakeholders—including HANYS and other interested parties—have deliberated for several years in an attempt to identify solutions to ballooning costs of medical liability insurance in New York. Rather than contribute to that effort, this legislation aims to worsen an already poor situation.

New York is widely considered the worst jurisdiction in the country for its medical liability litigation system. The shocking facts are that, according to the National Practitioner Data Bank, in 2015 total nationwide malpractice claims payments were nearly \$4 billion. Five states account for about half that number and New York is at the top; New York’s payout is double the next-closest state.

We clearly have a system in crisis. By opening the door to an unknown number of lawsuits, this bill simply fuels the flames. HANYS suggests that the Legislature enact laws that return a measure of sanity to the litigation system rather than legislation that will further solidify our place as worst in the nation.

For the reasons cited above, HANYS strongly opposes this legislation.