

MEDICAL SOCIETY of the STATE OF NEW YORK

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MEMORANDUM IN OPPOSITION

ON ASSEMBLY FLOOR

A.3339 (WEINSTEIN)

IN SENATE JUDICIARY COMMITTEE

S.4080 (DEFRANCISCO)

AN ACT To Amend The Civil Practice Law And Rules, In Relation To Accrual Of Certain Causes Of Action

This bill would amend the CPLR to substantially lengthen the statute of limitations for medical malpractice actions. **As this measure is projected to lead to enormous increases in the cost of liability insurance for physicians and hospitals at a time when no increases can be tolerated due to the profound changes occurring in our health care delivery and payment system, the Medical Society of the State of New York strongly opposes this measure and urges its defeat.**

The effect of this drastic proposal is that it would greatly lengthen the statute of limitations for every single medical malpractice case. A Milliman actuarial study of substantially similar legislation indicated that if this legislation were to be enacted, **medical liability premiums would need to be increased by nearly 15%, perhaps even greater.** Given that many hospitals and physicians all across New York State are barely able to keep their doors open now to continue delivering the care expected by our patients, any increases of this nature would prompt a very serious access-to-care problem throughout New York State.

The timing of this legislation could not be worse. We now have multiple malpractice insurance companies operating in New York State that in serious financial jeopardy which can ill-afford to absorb the substantial costs of a brand new cause of action. Moreover, with the US House's recent passage of the AHCA, there is enormous uncertainty in our health care system because of proposals in the AHCA that could profoundly restructure New York's Medicaid system.

It must be understood that New York physicians already pay premium rates that are already among the very highest in the country. **Yet while dozens of other states across the country have passed legislation to reduce these costs, New York State has failed to enact legislation to address this problem.**

For many physicians currently struggling to keep their practices afloat due to the enormous changes taking place in health care delivery in large part brought on by implementation of the Affordable Care Act, this legislation could be the "final straw" to drive them out of practice and into other states. Many New York physicians pay liability premiums that far exceed \$100,000 and some even exceed \$300,000! The cost of medical liability coverage for the 2015-16 year is:

- \$338,252 for a neurosurgeon in Nassau and Suffolk counties;
- \$186,630 for an obstetrician in Bronx and Richmond counties;
- \$141,534 for an orthopedic surgeon in Nassau and Suffolk Counties;
- \$132,704 for a general surgeon in Kings and Queens counties, and
- \$134,902 for a vascular surgeon or cardiac surgeon in Bronx and Richmond counties.

Moreover, malpractice payouts in New York State continue to be far out of proportion to the rest of country. For example, a recently released report by Diederich Healthcare showed that once again New York State had by far and away the highest number cumulative medical liability payouts (\$711,718,250), nearly two times greater than the state with the next highest amounts, Pennsylvania (\$374,018,550), and far exceeding states such as California (\$263,874,600) and Florida (\$248,911,150). At the same time, New York had by far and away the highest per-capita medical liability payments in the country, far exceeding the second highest state Massachusetts by nearly 20%, the third highest state Pennsylvania by 23%, and the fourth highest state New Jersey by 26%. **Remarkably, it was more than 500% more than California!**

It is little wonder that a recent analysis from the website WalletHub listed New York as the worst state in the country in which to practice medicine, in large part due to its overwhelming liability exposure as compared to other states in the country.

At the same time physicians face these exorbitant costs, health plans continue to reduce payments to physicians by inappropriately denying, delaying and reducing payment for needed care. Exacerbating these problems are the increasingly large patient balances that are accruing as a result of a significant increase in the use of high deductible health insurance plans. At the same time, physicians face substantial new costs as a significant component of their revenue base will be conditioned on participation in often unwieldy value-based payment schemes both in Medicare and in Medicaid, including the need to invest tens of thousands of dollars to implement electronic medical record systems. When factoring all these problems together, it is no surprise that regions all across New York State are beginning to see shortages in several specialties, according to reports issued by the Center for Health Workforce Studies.

Proponents of this measure argue that many other states have incorporated such “date of discovery” exceptions into their statutes of limitation for medical liability actions. However, many of these states have also included a far shorter outside limit to bring these actions than the 10 year period of time proposed in this legislation. **Furthermore, the vast majority of these states with “date of discovery” rules also have enacted caps on non-economic damages in medical liability actions, thereby significantly offsetting the enormous costs of this provision.** Moreover, those states that have “date of discovery” rules, but no caps on damages, include Alabama, Delaware, Iowa, Kentucky, Rhode Island, Vermont and Wyoming, where physicians pay far less in medical liability insurance premiums than those paid by physicians in New York City, Long Island and the Hudson Valley.

We reiterate that enacting this one sided legislation without enacting corresponding reforms to bring down the exorbitant cost of liability insurance would have drastic consequences on New York’s health care system. We need liability cost decreases, not increases!

We need comprehensive liability reform to preserve access to care for patients, not one-sided proposals that would further reduce access through imposition of unsustainable new costs!

Based on the foregoing, MSSNY urges that this legislation be defeated.

Respectfully Submitted,

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS

5/12/17
MMA - oppose