

GNYHA STATEMENT OF OPPOSITION

April
Four
2014

TO: Members of the New York State Assembly
FROM: Greater New York Hospital Association
RE: A.1056: Extend New York's Statute of Limitations for Medical Malpractice Cases

A.1056 would cause New York's two-and-one-half year statute to run not from the act, omission, or failure complained of, which is its current formulation, **but** from "when one knows or reasonably should have known of the alleged negligent act or omission *and* knows or reasonably should have known that said negligent act has caused an injury." GNYHA strongly opposes any extension of New York State's statute of limitations for medical malpractice actions because it would unnecessarily increase malpractice coverage costs. *Actuaries have estimated that this proposal would increase coverage costs by as much as 15-25% given the need to reserve for potential increases in claims and related factual disputes.*

The Need to Control Costs: New York's malpractice statute of limitations was enacted in 1975 as a reform designed to help control malpractice costs and yet protect patient rights. In spite of providers' efforts to reduce adverse events, New York's malpractice coverage costs are among the nation's highest, *with several hospitals and hospital systems each spending more than \$100 million a year for coverage. In addition, some physicians pay \$200,000 to \$300,000 in annual premiums.* New York's coverage costs also differ materially by territory, supporting the view that these costs are a function of the malpractice "environment" in an area as opposed to provider quality.

New York's Statute, Longer than Most: Proponents of amending New York's statute argue that New York law is somehow an outlier, which is not the case. New York's general statute for malpractice actions is among the longest in the nation. Most states have general malpractice statutes that run from the date of an "injury" or "the act, omission, or failure" causing the injury, which is New York's formulation. *Of those states, nearly three-quarters have statutes that are shorter than New York's law. Of those with longer statutes, the majority have caps that mitigate the impact of the longer statutes.*

Mechanisms for Extending New York's Statute: New York permits the extension of its general statute for a number of reasons including when there is continuous treatment of a condition; discovery of a foreign object; a case involving minors or disabled persons; and fraudulent concealment. While it is often referenced that other states have statutes that run more generally from "discovery" of an injury, many such statutes are actually similar to New York law (e.g., they run from discovery of a foreign object) or are more narrowly drawn than what has been proposed. In addition, three-quarters of those states with a form of "discovery" rule have outer limits on the ability to file claims. Finally, *the vast majority of states with "broader" discovery rules also have caps on non-economic damages and sometimes on total damages, thereby minimizing their cost.* The lesson is that one cannot look at just one aspect of a law, but rather at the totality of its procedural and substantive rights.

Summary: Extending New York's statute would undermine the goal of statutes of limitations in general and New York's malpractice statute in particular, namely, to balance the need to provide a reasonable period to file actions against the importance of reasonably containing costs. New York law provides a reasonable period in which to bring actions as well as mechanisms for extending that time. Extending the existing statute, on the other hand, would significantly and unnecessarily increase coverage costs. GNYHA therefore strongly opposes any extension of New York's statute for malpractice actions.



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