

NYS FINAL BUDGET LANGUAGE

April 2020

Excerpt Re: NYS Excess Medical Malpractice 2020-2021

Senate and Assembly Bills

S.7507A A.9507A

Pages 136 - 137- 138

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PART T

28 Section 1. Section 40 of chapter 266 of the laws of 1986, amending
29 the civil practice law and rules and other laws relating to malpractice
30 and professional medical conduct, as amended by section 4 of part F of
31 chapter 57 of the laws of 2019, is amended to read as follows:

32 § 40. The superintendent of financial services shall establish rates
33 for policies providing coverage for physicians and surgeons medical
34 malpractice for the periods commencing July 1, 1985 and ending June 30,
35 [~~2020~~] 2021; provided, however, that notwithstanding any other provision
36 of law, the superintendent shall not establish or approve any increase
37 in rates for the period commencing July 1, 2009 and ending June 30,
38 2010. The superintendent shall direct insurers to establish segregated
39 accounts for premiums, payments, reserves and investment income attrib-
40 utable to such premium periods and shall require periodic reports by the
41 insurers regarding claims and expenses attributable to such periods to
42 monitor whether such accounts will be sufficient to meet incurred claims
43 and expenses. On or after July 1, 1989, the superintendent shall impose
44 a surcharge on premiums to satisfy a projected deficiency that is
45 attributable to the premium levels established pursuant to this section
46 for such periods; provided, however, that such annual surcharge shall
47 not exceed eight percent of the established rate until July 1, [~~2020~~]
48 2021, at which time and thereafter such surcharge shall not exceed twen-
49 ty-five percent of the approved adequate rate, and that such annual
50 surcharges shall continue for such period of time as shall be sufficient
51 to satisfy such deficiency. The superintendent shall not impose such
52 surcharge during the period commencing July 1, 2009 and ending June 30,
53 2010. On and after July 1, 1989, the surcharge prescribed by this
54 section shall be retained by insurers to the extent that they insured

1 physicians and surgeons during the July 1, 1985 through June 30, [~~2020~~
2 2021 policy periods; in the event and to the extent physicians and
3 surgeons were insured by another insurer during such periods, all or a
4 pro rata share of the surcharge, as the case may be, shall be remitted
5 to such other insurer in accordance with rules and regulations to be
6 promulgated by the superintendent. Surcharges collected from physicians
7 and surgeons who were not insured during such policy periods shall be
8 apportioned among all insurers in proportion to the premium written by
9 each insurer during such policy periods; if a physician or surgeon was
10 insured by an insurer subject to rates established by the superintendent
11 during such policy periods, and at any time thereafter a hospital,
12 health maintenance organization, employer or institution is responsible
13 for responding in damages for liability arising out of such physician's
14 or surgeon's practice of medicine, such responsible entity shall also
15 remit to such prior insurer the equivalent amount that would then be
16 collected as a surcharge if the physician or surgeon had continued to
17 remain insured by such prior insurer. In the event any insurer that
18 provided coverage during such policy periods is in liquidation, the
19 property/casualty insurance security fund shall receive the portion of
20 surcharges to which the insurer in liquidation would have been entitled.
21 The surcharges authorized herein shall be deemed to be income earned for
22 the purposes of section 2303 of the insurance law. The superintendent,
23 in establishing adequate rates and in determining any projected defi-
24 ciency pursuant to the requirements of this section and the insurance
25 law, shall give substantial weight, determined in his discretion and
26 judgment, to the prospective anticipated effect of any regulations
27 promulgated and laws enacted and the public benefit of stabilizing
28 malpractice rates and minimizing rate level fluctuation during the peri-
29 od of time necessary for the development of more reliable statistical
30 experience as to the efficacy of such laws and regulations affecting
31 medical, dental or podiatric malpractice enacted or promulgated in 1985,
32 1986, by this act and at any other time. Notwithstanding any provision
33 of the insurance law, rates already established and to be established by
34 the superintendent pursuant to this section are deemed adequate if such
35 rates would be adequate when taken together with the maximum authorized
36 annual surcharges to be imposed for a reasonable period of time whether
37 or not any such annual surcharge has been actually imposed as of the
38 establishment of such rates.

39 § 2. Section 20 of part H of chapter 57 of the laws of 2017, amending
40 the New York Health Care Reform Act of 1996 and other laws relating to
41 extending certain provisions relating thereto, as amended by section 6
42 of part F of chapter 57 of the laws of 2019, is amended to read as
43 follows:

44 § 20. Notwithstanding any law, rule or regulation to the contrary,
45 only physicians or dentists who were eligible, and for whom the super-
46 intendent of financial services and the commissioner of health, or their
47 designee, purchased, with funds available in the hospital excess liabil-
48 ity pool, a full or partial policy for excess coverage or equivalent
49 excess coverage for the coverage period ending the thirtieth of June,
50 two thousand [~~nineteen,~~] twenty, shall be eligible to apply for such
51 coverage for the coverage period beginning the first of July, two thou-
52 sand [~~nineteen,~~] twenty; provided, however, if the total number of
53 physicians or dentists for whom such excess coverage or equivalent
54 excess coverage was purchased for the policy year ending the thirtieth
55 of June, two thousand [~~nineteen]~~ twenty exceeds the total number of
56 physicians or dentists certified as eligible for the coverage period

1 beginning the first of July, two thousand [~~nineteen~~, twenty], then the
2 general hospitals may certify additional eligible physicians or dentists
3 in a number equal to such general hospital's proportional share of the
4 total number of physicians or dentists for whom excess coverage or
5 equivalent excess coverage was purchased with funds available in the
6 hospital excess liability pool as of the thirtieth of June, two thousand
7 [~~nineteen~~, twenty], as applied to the difference between the number of
8 eligible physicians or dentists for whom a policy for excess coverage or
9 equivalent excess coverage was purchased for the coverage period ending
10 the thirtieth of June, two thousand [~~nineteen~~, twenty] and the number of
11 such eligible physicians or dentists who have applied for excess cover-
12 age or equivalent excess coverage for the coverage period beginning the
13 first of July, two thousand [~~nineteen~~, twenty].

14 § 3. This act shall take effect April 1, 2020, provided, however, if
15 this act shall become a law after such date it shall take effect imme-
16 diately and shall be deemed to have been in full force and effect on and
17 after April 1, 2020.