

**Memorandum in Opposition
Physicians Excess Medical Malpractice Program
H/MH Article VII Part K**

The New York American College of Emergency Physicians (NYACEP) is strongly opposed to a proposal contained in Part K of the Health/Mental Hygiene Article 7 bill that would require the 15,000 physicians currently enrolled in the Excess Medical Malpractice Insurance program to bear 50% of the cost of these policies. This proposal was advanced during past Administration Executive Budgets, but was thankfully rejected by the State Legislature because of its adverse impact not only on physicians, but ultimately for patients who are the beneficiaries of this program. Unfortunately, the proposal has now returned to the Executive Budget, and we urge the Legislature to again reject it.

This incredibly short-sighted proposal would thrust nearly \$40 million of new costs on the backs of our community-based physicians who served on the front lines of responding to the pandemic, many of whom are struggling to stay in practice to deliver needed care, and at a time when physicians already face staggeringly high liability premiums that have gone up by an 10% in the last 2 years. It is likely that many physicians will simply forego the coverage in order to avoid the thousands to tens of thousands of dollar of new costs, *per physician*, this Budget proposal would impose.

**ESTIMATED NEW COSTS TO BE IMPOSED ON PHYSICIANS FOR EXCESS
COVERAGE BASED UPON GOVERNOR’S 50% COST BUDGET PROPOSAL**

SPECIALTY	Long Island	Bronx, Staten Island	Brooklyn, Queens	Westchester, Orange, Manhattan
<i>ER</i>	\$5,295	\$6,146	\$5,743	\$4,003
<i>Cardiac Surgery</i>	\$3,668	\$4,258	\$3,979	\$2,774
<i>OB-GYN</i>	\$17,090	\$19,836	\$18,536	\$12,921
<i>Neurosurgery</i>	\$28,827	\$33,459	\$31,266	\$21,794

Based on 2022-23 MLMIC policy year rates

This program remains essential for maintaining patient access to expert specialized care as New York’s physicians and hospitals continue to incur the highest liability awards and costs in the nation,

The Excess Medical Malpractice Insurance Program provides an additional layer of \$1M of coverage to physicians with hospital privileges who maintain primary coverage at the \$1.3 million/\$3.9 million level. The program was created because of the liability insurance crisis of the mid-1980’s to address concerns among physicians that their liability exposure far

exceeded available coverage limitations. They legitimately feared that everything they had worked for all their professional lives could be lost because of one wildly aberrant jury verdict.

This fear continues today since New York State has failed to enact meaningful liability reform to ameliorate this risk. The size of medical liability awards in New York State has continued to rise significantly and physician liability premiums remain far out of proportion compared to the rest of the country. In fact, New York's total medical liability payouts between 2020-2022 are nearly twice as great as the second highest state, Pennsylvania (see chart below), and far surpassing more populous states such as California and Texas. Medical liability costs hurt consumer affordability and access, as these costs contribute to New York's high premium costs, which also limit small business growth. Moreover, excessive liability costs disproportionately impact physicians working in underserved communities who have experienced heightened financial strain from the pandemic. For these reasons, New York is regularly ranked [worst among states in the country for physicians to practice medicine](#).

Absent comprehensive liability reform to bring down New York's grossly disproportionate medical liability costs, maintaining of an adequately funded Excess Medical Malpractice Insurance Program is absolutely essential to maintaining availability of skilled physician care in New York.



We need the enactment of measures that help reduce these overwhelming costs. Furthermore, it is imperative that any legislative proposal that would reasonably result in a significant increase in liability insurance costs be balanced with provisions to reduce these costs. For these reasons, NYACEP strongly urges your opposition to this proposal and requests that it be rejected in the budget.