

Memorandum in Opposition
Physicians Excess Medical Malpractice Program
Health/MH Article VII, Part G

The New York American College of Emergency Physicians (New York ACEP) is strongly opposed to a proposal contained in Part G of the Health/Mental Hygiene Article 7 bill that would require the 16,000 physicians currently enrolled in the Excess Medical Malpractice Insurance program to bear 50% of the cost of these policies. This proposal has been advanced in multiple previous Executive Budgets but thankfully has been rejected by the State Legislature because of its adverse impact not only on physicians, but for the patients who are the ultimate beneficiaries of this program. We urge the Legislature to again reject this proposal and protect needed patient access to primary and specialty-based physician care.

This 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. At a time when physicians already face staggeringly high liability premiums, that have gone up by nearly 12% in the last 3 years and face continuing cuts in reimbursement from Medicare and other payors, this additional cost would be devastating. This cost imposition will most acutely impact those specialty physicians where we are already seeing physician shortages, including reproductive healthcare services, emergency care and surgical services.

Many of these physicians will have no choice but to move to other states with more favorable practice environments. Many others may forego the coverage in order to avoid the thousands to tens of thousands of dollars 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

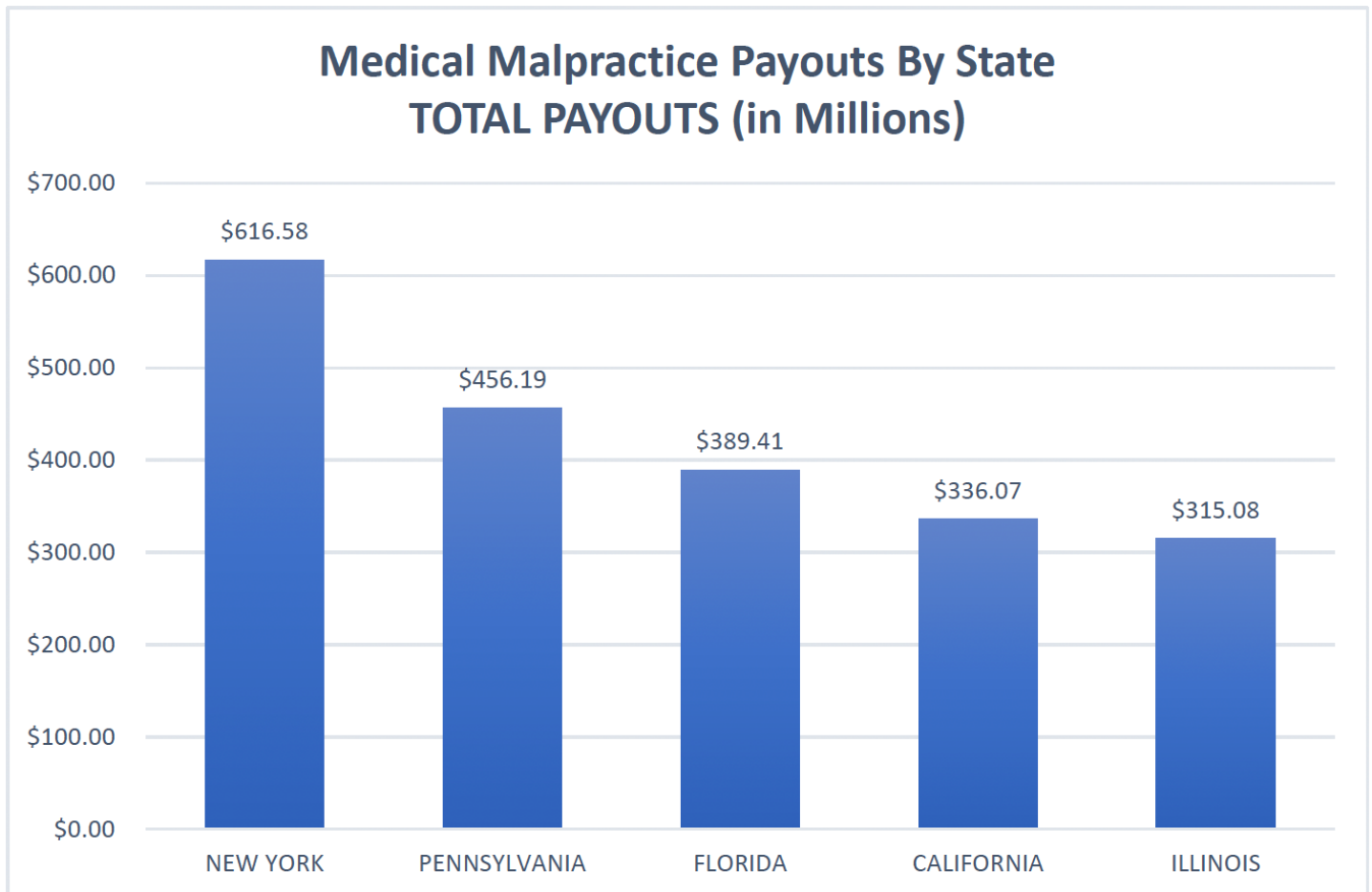
SPECIALTY	Long Island	Bronx, Staten Island	Brooklyn, Queens	Westchester, Orange, Manhattan
<i>ER</i>	\$5,554	\$6,446	\$6,024	\$4,199
<i>Cardiac Surgery</i>	\$3,848	\$4,466	\$4,173	\$2,909
<i>General Surgery</i>	\$3,858	\$4,477	\$4,184	\$2,916
<i>OB-GYN</i>	\$17,071	\$19,813	\$18,516	\$12,916
<i>Neurosurgery</i>	\$28,796	\$33,423	\$31,233	\$21,771

These costs would be on top of the tens of thousands, in some cases, hundreds of thousands of dollars that physicians already pay per year for their liability insurance coverage.

The Excess Medical Malpractice Insurance Program provides an additional layer of \$1 million 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 on 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. While many other states have passed laws to contain medical liability payouts and provide greater fairness in medical liability litigation, New York has not, which is why our medical liability insurance and payout costs far exceed every other state in the country. In fact, in 2023 New York exceeded the 2nd highest state Pennsylvania by 35%, the 3rd highest state Florida by 58%, and 4th highest state California by 83%! 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 an adequately funded Excess Medical Malpractice Insurance Program is essential to maintaining some availability of skilled physician care throughout the various regions of New York to ensure patients can receive the care they need and in a timely manner.

For these reasons, the Emergency Physicians of New York ACEP strongly urge your opposition to this proposal. We request that it be rejected in the budget and work for the enactment of measures that will help to reduce these overwhelming costs that are interfering with patient access to needed care.