

Memorandum In Opposition
S4423 (Hoylman-Sigal)/ A6063 (Lunsford)

AN ACT to amend the estates, powers, and trusts law, in relation to payment and distribution of damages in wrongful death actions

The New York American College of Emergency Physicians (New York ACEP) represents over 3,000 dedicated emergency medicine physicians committed to speaking out for broad access to quality health care, especially emergency health services for all citizens. **We strongly oppose S4423(Hoylman-Sigal)/ A6063 (Lunsford).** This bill would amend the estates, powers, and trusts law to authorize an award in a wrongful death action to include compensation for grief or anguish, the loss of love or companionship, loss of services and support, and the loss of nurture and guidance. Furthermore, this bill would allow a claim to be filed up to three years after the decedent's death. This bill will vastly increase the amount of recoverable damages in these cases and dramatically increase liability insurance premiums which are already the highest in the nation. **The explosive increase in liability costs that expansions like this bill would necessitate would cause significant damage to our healthcare safety net, driving physicians out of state, and exacerbate the already challenging patient access to care issues we face.** New York ACEP strongly opposes this measure and urges that it be defeated.

The law currently allows the decedent's estate and family members to bring separate actions - which inevitably become linked - to hold tortfeasors accountable for both economic damages and the pain and suffering caused to the decedent. The decedent's estate sues for both the decedent's economic losses and damages for the pain and suffering of the decedent. These pain and suffering damages are awarded to the decedent's estate when the jury determines that the decedent experienced pain prior to death. In virtually all cases, it is the decedent's family members who are the beneficiaries of these awards through their participation in the decedent's estate. On top of this, family members can bring their own suit for economic loss - which includes the loss of consortium and damages for custodial care.

Given the extraordinary costs of medical liability insurance that many physicians must pay, combined with the enormous changes in health care delivery and payment that is placing huge new financial pressures on physicians and hospitals, it is irresponsible to consider legislation at this time that would significantly increase these costs.

Governor Hochul has vetoed three prior versions of this bill. The Governor's most recent veto message states that, "For the third year in a row, the Legislature has passed a bill that continues to pose significant risks to consumers...At a time when New Yorkers are already facing higher costs of living due to inflation and other factors, genuine concerns have been raised that the bill may lead to higher costs, including insurance premiums, and may also risk the financial well-being of our healthcare system, including those hospitals that serve disadvantaged communities." **This year's legislation contains no changes to the version that was vetoed last year and would have significant adverse impact to New York's healthcare system.**

While the legislature has not completed any fiscal analysis for this bill, prior calculations by the New York State Division of Budget found that it would increase medical liability for State-run healthcare facilities and safety net healthcare providers by \$214 million annually. New York currently expends over \$475 million dollars annually in medical malpractice payments for state run healthcare facilities.

Malpractice payouts in New York State continue to be far out of proportion to the rest of country. Recent [studies](#) demonstrate New York has highest cumulative medical liability payouts of any state in the country with a total of \$662 million in 2019. According to the Lawsuit Reform Alliance of New York “the second highest state, Pennsylvania, had a payout total that was over \$260,000 less than New York. In fact, the entire Western U.S. (including California) paid out only \$28 million more in medical malpractice payouts than New York.” New York medical malpractice costs far exceed other large states with which we regularly compete for attracting and retaining skilled physicians such as California and Texas.

Therefore, it is unsurprising that a recent analysis from the website [WalletHub](#) again has listed New York as the worst state in the country to be a doctor, 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.

In sum, this bill would do nothing to address the problems facing our health care system and would instead make these problems worse by adding substantial new costs at a time when we can least afford to incur them. Given New York’s State reputation for being one of the worst states in the country in which to be a physician, it is imperative we take steps to ensure that we can retain and attract skilled physicians to our state to best serve the healthcare needs of our patients.

For all the reasons listed above and to preserve access to our healthcare safety net, the Emergency Physicians of New York ACEP are strongly opposed to S4423 (Hoylman-Sigal)/ A6063 (Lunsford) and urge that this bill be defeated.