DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the public health law, in relation to consolidating the excess medical malpractice liability coverage pool; and to repeal section 18 of chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to medical and dental malpractice, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 18 of chapter 266 of the laws of 1986, amending the
2 civil practice law and rules and other laws relating to medical and
3 dental malpractice, is REPEALED.
4 § 2. Any rules or regulations promulgated by the superintendent of
5 insurance or the commissioner of health pursuant to the provisions of
6 section 18 of chapter 266 of the laws of 1986 shall survive such repeal,
7 and shall be applicable to the excess medical malpractice liability
8 coverage pool and related provisions as created by section three of this
9 act.
10 The repeal of section 18 of chapter 266 of the laws of 1986 as effec-
11 tuated by section one of this act shall not affect the rights or obli-
12 gations of any physician, dentist, insurer or general hospital related
13 to excess or equivalent excess coverage purchased pursuant to the
14 provisions of section 18 of chapter 266 of the laws of 1986 that were in
15 effect prior to the date this act takes effect; nor shall the repeal of
16 section 18 of chapter 266 of the laws of 1986 as effectuated by section
17 one of this act affect the rights or obligations of any claimant against
18 excess or equivalent excess coverage that was purchased pursuant to the

1 provisions of section 18 of chapter 266 of the laws of 1986 that were in
2 effect prior to the date this act takes effect.
3 § 3. The public health law is amended by adding a new section 23 to
4 read as follows:
5 § 23. Excess medical malpractice liability coverage pool. 1. The
6 hospital excess liability pool established by subdivision five of
7 section eighteen of chapter two hundred sixty-six of the laws of nine-
8 teen hundred eighty-six, as amended by chapter two hundred fifty-six of
9 the laws of nineteen hundred ninety-three shall be continued and is
10 hereby renamed the "excess medical malpractice liability coverage pool."
11 The excess medical malpractice liability coverage pool shall be overseen
12 by the superintendent of financial services and the commissioner, and
13 shall consist of funds currently in or owed to the excess liability pool
14 as of the effective date of this section, and funds appropriated for the
15 purposes of the excess medical malpractice liability coverage pool.
16 2. Notwithstanding any inconsistent provision of sections one hundred
17 twelve and one hundred sixty-three of the state finance law, or sections
18 one hundred forty-two and one hundred forty-three of the economic devel-
19 opment law, or any other contrary provision of law, the superintendent
20 of financial services may enter into a contract or contracts under this
21 subdivision without a competitive bid or request for proposal process,
22 provided, however, that:
23 (a) The department of financial services shall post on its website,
24 for a period of no less than thirty days:
25 (i) A description of the proposed services to be provided pursuant to
26 the contract or contracts;
27 (ii) The criteria for selection of a contractor or contractors;

1 (iii) The period of time during which a prospective contractor may
2 seek selection, which shall be no less than thirty days after such
3 information is first posted on the website; and
4 (iv) The manner by which a prospective contractor may seek such
5 selection, which may include submission by electronic means;
6 (b) All reasonable and responsive submissions that are received from
7 prospective contractors in timely fashion shall be reviewed by the
8 superintendent of financial services; and
9 (c) The superintendent of financial services shall select such
10 contractor or contractors that, in the superintendent of financial
11 services' discretion, are best suited to serve the purposes of this
12 subdivision.
13 3. (a) The superintendent of financial services and the commissioner
14 or their designees shall, from funds available in the excess medical
15 malpractice liability coverage pool created pursuant to subdivision one
16 of this section, purchase a policy or policies for excess insurance
17 coverage, or for equivalent excess coverage, for medical or dental malp-
18 ractice occurrences between the first of July of a given year and ending
19 the thirtieth of June of the next succeeding year, or to reimburse a
20 general hospital where the hospital purchases equivalent excess coverage
21 for medical or dental malpractice occurrences between the first of July
22 in a given year and ending the thirtieth of June in the succeeding year
23 for eligible physicians or dentists as certified by a general hospital
24 licensed pursuant to article twenty-eight of this chapter for each such
25 period or periods.
26 (b) Such policies may be purchased pursuant to section five thousand
27 five hundred two of the insurance law, or from an insurer, duly licensed

1 in this state to write personal injury liability insurance and actually
2 writing medical malpractice insurance in this state.
3 (c) No single insurer shall write more than fifty percent of the total
4 excess premium for a given policy year, unless upon request by the
5 insurer, the superintendent of financial services in writing determined
6 that exceeding such limit would not be harmful to the policyholder and
7 the people of the state.
8 4. (a) For the purposes of this section, "eligible physician or
9 dentist" shall a mean a physician or dentist, excluding a faculty prac-
10 tice physician or dentist, who:
11 (i) is primarily engaged in the private practice of medicine, or is an
12 employee of an eligible hospital;
13 (ii) has professional privileges in the general hospital that is
14 certifying the physician's or dentist's eligibility;
15 (iii) is providing emergency medical or dental services, including
16 emergency medical screening examinations, treatment for emergency
17 medical conditions, including labor and delivery, or treatment for emer-
18 gency dental conditions to persons in need of such treatment at the
19 general hospital that is certifying their eligibility; and
20 (iv) (1) has in force coverage under an individual policy or group
21 policy written in accordance with the provisions of the insurance law,
22 paid for solely by such physician or dentist or his or her private prac-
23 tice, from an insurer licensed in this state to write personal injury
24 liability insurance, of primary malpractice insurance coverage in
25 amounts of no less than one million three hundred thousand dollars for
26 each claimant and three million nine hundred thousand dollars for all
27 claimants under that policy and covering the same time period as the
28 excess insurance coverage;

1 (2) in the case of an employee of an eligible hospital, has in force
2 an individual policy or group policy written in accordance with the
3 provisions of the insurance law, partially or fully purchased by an
4 eligible hospital, from an insurer licensed in this state to write
5 personal injury liability insurance, of primary malpractice insurance
6 coverage in amounts of no less than one million three hundred thousand
7 dollars for each claimant and three million nine hundred thousand
8 dollars for all claimants under that policy and covering the same time
9 period as the excess insurance coverage; or
10 (3) is endorsed as an additional insured under a voluntary attending
11 physician ("channeling") program previously permitted by the superinten-
12 dent of insurance and covering the same time period as the equivalent
13 excess coverage.
14 (b) The excess coverage or equivalent excess coverage shall, when
15 combined with the physician's or dentist's primary malpractice insurance
16 coverage or coverage provided through a voluntary attending physician
17 ("channeling") program previously permitted by the superintendent of
18 insurance, total an aggregate level of coverage of two million three
19 hundred thousand dollars for each claimant and six million nine hundred
20 thousand dollars for all claimants with respect to occurrences during
21 the policy period.
22 (c) The equivalent excess coverage shall provide for payment only
23 after coverage available through the voluntary attending physician
24 ("channeling") program has been exhausted during the policy period.
25 (d) In the event that an eligible physician or dentist has profes-
26 sional privileges in more than one general hospital, the certification
27 of the physician's or dentist's eligibility shall be provided by the
28 general hospital designated by such physician or dentist as the general

1 hospital with which the physician or dentist is primarily affiliated, as
2 may be defined pursuant to regulations promulgated by the commissioner.
3 5. For the purposes of this section the term "eligible hospital" shall
4 mean a general hospital that has been determined by the commissioner in
5 consultation with the superintendent of financial services to:
6 (a) have adequately demonstrated that high costs for, or lack of
7 availability of, medical malpractice liability coverage have impaired
8 the hospital's ability to attract and retain physicians and dentists
9 practicing in fields for which there is high demand based on the ratio
10 of patient volume to available physicians; and
11 (b) be a vital access provider; and
12 (c) have adequately demonstrated that the general hospital is in
13 financial distress.
14 6. For the purposes of this section "equivalent excess coverage" shall
15 mean a policy or policies of insurance for a physician or dentist
16 insured under a voluntary attending physician ("channeling") program
17 previously permitted by the superintendent of insurance insuring a
18 physician or dentist against medical or dental malpractice with an
19 aggregate level of coverage providing not less than two million three
20 hundred thousand dollars for each claimant and six million nine hundred
21 thousand dollars for all claimants during the policy period. Such cover-
22 age limits shall be reduced by payments made on behalf of such physician
23 or dentist under a hospital professional liability policy written pursu-
24 ant to a voluntary attending physician ("channeling") program previously
25 permitted by the superintendent of insurance, in an amount not to exceed
26 two million three hundred thousand dollars for each claimant and six
27 million nine hundred thousand dollars for all claimants during such
28 policy period for each such physician or dentist.

1 7. For the purposes of this section, a physician or dentist in the
2 "private practice of medicine" shall mean a physician or dentist who
3 receives the largest percentage of his or her income derived from the
4 provision of medical services, from bills:
5 (a) issued directly by the physician or dentist;
6 (b) issued directly by a corporation, organized for the purpose of
7 providing medical or dental care, that is not owned by, and is not a
8 subsidiary of, a general hospital, or issued by a vendor contracted by
9 that corporation for the purposes of billing, for services rendered by
10 the physician or dentist; or
11 (c) issued by a general hospital for services rendered by a physician
12 or dentist who has in force an individual medical malpractice insurance
13 policy that is purchased solely by the physician or dentist or an organ-
14 ization described in paragraph (b) of this subdivision, from an insurer
15 licensed in this state to write personal injury liability insurance, of
16 primary medical malpractice insurance coverage in amounts of no less
17 than one million three hundred thousand dollars for each claimant and
18 three million nine hundred thousand dollars for all claimants.
19 8. (a) To the extent funds available to the excess medical malpractice
20 liability coverage pool pursuant to subdivision one of this section are
21 insufficient to meet the costs of excess insurance coverage or equiv-
22 alent excess coverage for coverage periods during the period between
23 July first of a given year and June thirtieth of the next succeeding
24 year, beginning July first, two thousand twelve and ending June thirti-
25 eth, two thousand fourteen each physician or dentist for whom a policy
26 for excess insurance coverage or equivalent excess coverage is purchased
27 for such period shall be responsible for payment to the provider of
28 excess insurance coverage or equivalent excess coverage of an allocable

1 share of such insufficiency, based on the ratio of the total cost of
2 such coverage for such physician or dentist to the sum of the total cost
3 of such coverage for all physicians or dentists applied to such insuffi-
4 ciency.
5 (b) Each provider of excess insurance coverage or equivalent excess
6 coverage covering the period between July first of a given year and June
7 thirtieth of the next succeeding year, beginning July first, two thou-
8 sand twelve and ending June thirtieth, two thousand fourteen shall noti-
9 fy a covered physician or dentist by mail, mailed to the address shown
10 on the last application for excess insurance coverage or equivalent
11 excess coverage, of the amount due to such provider from such physician
12 or dentist for such coverage period determined in accordance with para-
13 graph (a) of this subdivision. Such amount shall be due from such physi-
14 cian or dentist to such provider of excess insurance coverage or equiv-
15 alent excess coverage in a time and manner determined by the
16 superintendent of financial services.
17 (c) If a physician or dentist liable for payment of a portion of the
18 costs of excess insurance coverage or equivalent excess coverage cover-
19 ing the period between July first of a given year and June thirtieth of
20 the next succeeding year, beginning July first, two thousand twelve and
21 ending June thirtieth, two thousand fourteen determined in accordance
22 with paragraph (a) of this subdivision fails, refuses or neglects to
23 make payment to the provider of excess insurance coverage or equivalent
24 excess coverage in such time and manner as determined by the superinten-
25 dent of financial services pursuant to paragraph (b) of this subdivi-
26 sion, excess insurance coverage or equivalent excess coverage purchased
27 for such physician or dentist in accordance with this section for such
28 coverage period shall be cancelled and shall be null and void as of the

1 first day on or after the commencement of a policy period where the
2 liability for payment pursuant to this subdivision has not been met.
3 (d) Each provider of excess insurance coverage or equivalent excess
4 coverage shall notify the superintendent of financial services and the
5 commissioner or their designee of each physician and dentist eligible
6 for purchase of a policy for excess insurance coverage or equivalent
7 excess coverage covering the period between July first of a given year
8 and June thirtieth of the next succeeding year, beginning July first,
9 two thousand twelve and ending June thirtieth, two thousand fourteen
10 that has made payment to such provider of excess insurance coverage or
11 equivalent excess coverage in accordance with paragraph (b) of this
12 subdivision and of each physician and dentist who has failed, refused or
13 neglected to make such payment.
14 (e) A provider of excess insurance coverage or equivalent excess
15 coverage shall refund to the excess medical malpractice liability cover-
16 age pool any amount allocable to the period between July first of a
17 given year and June thirtieth of the next succeeding year, beginning
18 July first, two thousand twelve and ending June thirtieth, two thousand
19 fourteen received from the excess medical malpractice liability coverage
20 pool for purchase of excess insurance coverage or equivalent excess
21 coverage covering the period between July first of a given year and June
22 thirtieth of the next succeeding year, beginning July first, two thou-
23 sand twelve and ending June thirtieth, two thousand fourteen for a
24 physician or dentist where such excess insurance coverage or equivalent
25 excess coverage is cancelled in accordance with paragraph (c) of this
26 subdivision.
27 (f) A policy or policies of excess medical malpractice coverage issued
28 to or on behalf of an eligible physician or dentist pursuant to this

1 section shall be written upon and give effect to the choice of an insur-
2 er by the physician or dentist, provided, however, that such choice
3 shall be made among insurers writing excess coverage policies in accord-
4 ance with this section and further provided that no physician or dentist
5 shall be compelled to be insured by an insurer providing primary cover-
6 age nor shall such insurer providing such primary coverage be compelled
7 to write coverage of such eligible physician or dentist for such excess
8 coverage, in which case the eligible physician or dentist may select
9 another insurer writing such excess coverage in accordance with this
10 section.
11 9. Any insurer issuing policies of excess or equivalent excess cover-
12 age in accordance with subdivision one of this section may, notwith-
13 standing any provisions of the insurance law, return to the state, in
14 whole or in part, the moneys reimbursed by the state in accordance with
15 this section for specified policy periods, upon a certification to the
16 insurer by the superintendent of financial services that there is a
17 reasonable likelihood on an actuarial basis that the moneys returned
18 will not be needed to pay for the expected liabilities incurred by the
19 insurer for such policy periods.
20 10. The superintendent of financial services and the commissioner may
21 adopt and may amend such regulations as are necessary to effectuate the
22 provisions of this section.
23 § 4. This act shall take effect immediately.