

**MEDICAL SOCIETY**  
of the  
**STATE OF NEW YORK**

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**MEMORANDUM IN OPPOSITION**

**FY 2017 NYS Executive Budget**  
**Part C-S.6407/A.9007**  
**Health & Mental Hygiene**  
**Article VII Legislation**

**EXECUTIVE BUDGET'S VERSION OF EXCESS MEDICAL LIABILITY PROGRAM**

**MEMO IN OPPOSITION**

We are grateful that Governor Cuomo has proposed to continue the Excess Medical Liability Insurance Program. However, we are extremely concerned by programmatic changes included in the proposal to significantly limit physician access to Excess coverage and drastically reduce its appropriation by \$25M to \$102.4M. We urge that the Legislature restore this appropriation to its historical level of \$127.4M and reject the programmatic changes recommended in the budget.

Specifically, the proposal would require the Superintendent to, at least once every five years beginning on July 1, 2016, rank from highest to lowest each class and territory combination used for apportionment of premiums to pay for the excess coverage. Ranking, therefore, will be from the highest excess premium to the lowest. The proposal requires the Superintendent to grant priority for purchasing policies based on this ranking. **Under this proposal, 55% of physicians who currently receive Excess coverage would be dropped from the program.** In upstate communities north and west of Greene county, coverage would continue only for neurosurgeons, general surgeons including bariatric surgeons and OB-GYNs. **That means that in the Capital District, in Northern New York, in Central New York, in western New York and in the Southern Tier every family physician, internist, pediatrician, ophthalmologist, emergency room physician, vascular surgeon, cardiologist, radiologist, pathologist, otolaryngologist, dermatologist and allergist would be automatically dropped from the Excess program. Even in some downstate communities including in the Bronx, Kings, Queens, Westchester, Sullivan and Orange counties, many primary care physicians, ophthalmologists, otolaryngologists, pathologists, dermatologists and allergists would be dropped.** This means that many of the primary care physicians and ENTs in the five group practices in the Lower Hudson Valley that together are owed over \$12 million as a result of the demise of Health Republic (noted earlier) are also going to lose their Excess coverage. In addition, there would be only enough funding under this proposal to cover 527 of the 2108 internists who currently have Excess coverage and practice in New York, Westchester, Sullivan, Orange and Rockland counties. It is unclear how such coverage would be allocated among these internists. **At a time when the**

**state is seeking to attract and retain physicians, this proposal deters physicians from wanting to practice in New York State for fear of putting themselves and their families in financial jeopardy for judgements and settlements exceeding the limits of their primary coverage.** This result couldn't be further from this State's stated policy goals.

The Excess Medical Liability 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 cost of the program since its inception in 1985 has been met by utilizing public and quasi-public monies.

The Excess Medical Liability Insurance Program was created in 1985 as a result 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 of their professional lives could be lost as a result of one wildly aberrant jury verdict. This fear continues since absolutely nothing has been done to ameliorate it. The size of verdicts in New York State has increased exponentially.

The liability exposure level of physicians makes it clear that the protection at this level is essential, especially today. Given the realities of today's declining physician income levels and the downward pressures associated with managed care and government payers, the costs associated with the Excess coverage are simply not assumable by most physicians in today's practice environment. Indeed, as mentioned earlier, the ability of a physician to maintain even the primary medical liability coverage is increasingly compromised as a result of escalating costs and decreasing reimbursement. Without Excess, however, many physicians will be unable to continue to practice. Indeed, those who would be dropped would be personally exposed to financial ruin in the event that a judgment or award exceeded the limits of the primary layer.

It is important to note finally that the Excess program is not a solution to the underlying liability problem in New York State. That problem is caused by the failed civil justice system and the real solution is reform of that system.

**For all of the reasons stated above, we strongly urge that the Legislature reject this proposal.**

Respectfully Submitted,

**ELIZABETH DEARS, ESQ.**