

TALKING POINTS FOR MEDICAL SOCIETY EXECUTIVES ON GRIEVING FAMILIES ACT, "GFA", AB 9232B/SB 8485B

- The GFA passed the NY Legislature for the third straight year in 2024. The two prior versions from 2022 and 2023 were vetoed by the Governor.

The 2024 GFA does the following:

- Adds new damages that can be recovered in wrongful death ("WD") cases, damages for "grief or anguish" suffered by a family member of the decedent and damages for "loss of companionship."
- Expands time to sue in WD cases from current 2 years to 3 years.
- Expands the type of persons who can sue for WD of a loved one and recover damages to include **all** family members listed in current law, presently if a family member in the first tier of listed persons in the current law is available then they bring the suit and recover damages with all family members in lower tiers not eligible for damages.
- These new, expanded provisions would not just apply to WD cases brought on or after the day the GFA goes into effect but would also apply retroactively to all wrongful deaths occurring on or after January 1, 2021.

The 2024 GFA will increase medical liability costs in NY by up to 40 percent, according to an actuarial report by Milliman:

- Milliman's finding of the 40 percent increase in NY medical liability costs is based **ONLY** on the addition of the damages for "grief or anguish", **NOT** the provisions that expand the number of persons who can sue, the extra time to bring WD suits, the new damages for loss of companionship and the retroactive provision allowing prior WD actions to be brought for these new damages.
- NY is, unfortunately, the state with the highest medical liability costs, see the complete payout analysis at <https://www.diederichhealthcare.com/med-malpractice-payout-analysis-2022/>, merely scrolling down on that page will reveal the payout analysis for years prior to 2022.

How is last year's GFA bill different than this year's bill:

- Last year's bill listed those family members eligible to sue for a WD and recover damages, this year's bill primarily uses the current law list of eligible family members and adds a person acting in loco parentis to a minor.
- Last year's bill had a retroactive date of July 1, 2018, this year's bill has a retro date of January 1, 2021.
- **HOWEVER**, the bottom line is the estimated cost impact of GFA is entirely driven by the "grief or anguish" damages and those damages are contained in identical form in both last year's bill and this year's bill.

CONCLUSION: Without accompanying legislative measures to offset the increased medical liability costs of the GFA, NY's already unacceptably high medical liability costs will dramatically increase, not just harming NY physicians, healthcare providers and hospitals but ultimately all New Yorkers in the form of reduced access to care and higher health insurance premiums and out of pocket health costs due to the higher medical liability costs that will occur as a result of enacting the GFA.