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## PLEASE OPPOSE MEDICAL MALPRACTICE “CAPS”

The Medicaid Redesign Team, dominated by hospital and industry lobbyists, crafted a proposal that is now part of the Governor’s budget, which will provide a financial windfall for negligent hospitals, incompetent health care providers and their insurance companies. This proposal will drastically limit their responsibility to injured patients, especially brain-damaged babies.

**Secrecy.** No consumer or patient advocates with expertise on medical malpractice issues were allowed to participate on this Team. This has kept any outside experts from vetting these proposals, yet the hospitals were permitted to “score” them privately, likely using fabricated data, allowing them to come up with an absurdly-high “savings” number.

**Injured Patients Will be Further Harmed.** This proposal would drastically limit patients’ legal rights, including brutal “caps” on non-economic damages and a birth injury fund that limits the rights of brain-damaged babies and their families (“NII Fund”).

Caps on non-economic damages arbitrarily limit compensation and promote a kind of caste system by branding entire classes of low- or non-earners in our society (seniors, children, women who do not work outside the home, and the poor), as worth less than their wealthier counterparts. Experience elsewhere shows that in states with caps, many cases involving those categories of plaintiffs are no longer brought - at all.

NII Fund would force newborns into a new liability system that denies them the same kind of rights and recourse that adult men have in this state. Even if the baby’s family were able to bring a lawsuit, the sketchy details suggest that they would be condemned to a lifetime of additional suffering, forced to deal with a burdensome and humiliating struggle to get bills paid from a unaccountable insurance-funded entity. This additional burden on families who already face unimaginable challenges in caring for a profoundly disabled child is without compassion.

**Medicaid Costs Would Increase.** There is no benefit to Medicaid by limiting compensation to victims or making access to the courts more difficult. In fact, costs may shift from the negligent hospital directly onto Medicaid. Many New York hospitals have notoriously bad safety records, especially in low-income communities. These children, who are often on Medicaid, are able to get off Medicaid because settlements or verdicts pay for their needs.

**Patient Safety Will Suffer:** To pay for the NII Fund, an assessment would be placed on all hospitals. Unsafe hospitals would no longer pay for their own incidents of negligence; all hospitals would share the costs, removing the deterrence function of the civil justice system, which will lead to more unsafe care.

**Medical Malpractice Claims are Stable and Dropping.** According to NYPIRG’s recent analysis, the number of medical malpractice payouts has remained stable for years, despite a rapidly increasing supply of doctors and growth in the general population.

**Fix the Errors.** The first thing hospitals should be doing is reducing claims and lawsuits by working to decrease preventable errors in hospitals, reducing injuries and deaths. Only a small number of doctors are responsible for most malpractice. The DOH has failed miserably weeding these doctors out of the system.