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New York State Medical Malpractice Chronology

Key Highlights

1985 - New York enacted three out of four of the “medical liability reform” agenda items pushed by the corporate-backed American Tort Reform Association: a sliding scale limit on attorney’s contingent fees; prohibition of lump sum compensation payments to victims; and abolition of the collateral source. These laws added to legal obstacles that New Yorkers already faced, which residents in most other states do not: a restrictive statute of limitations law that begins to run from the date of a patient’s injury as opposed to its discovery; and, an archaic “wrongful death” law dating from the 1800s that does not allow compensation for emotional loss of a child who is killed by medical malpractice.

1992 to 1997 – These “tort reform” laws had such a significant impact on reducing medical malpractice payouts that the State, at the direction of Governor Pataki (and earlier Governor Cuomo) appropriated close to a billion dollars from the reserves of the Medical Malpractice Insurance Association (MMIA) - established by the State as the medical malpractice insurer of last resort – to close gaps in the State’s operating budget.

2001 - The State finally dissolved MMIA replacing it with the Medical Malpractice Insurance Plan (MMIP), an assigned risk plan in which all medical malpractice insurers participate. Unfortunately, because the State had drained MMIA’s money, MMIP had accumulated a deficit that, by law, had to be shouldered by the few companies selling malpractice insurance in the state.

July, 2007 - Governor Spitzer established a Medical Malpractice Advisory Task Force to come up with ways to resolve this MMIP problem. While the cause of this problem had nothing to do with any lawsuit or a claims “crisis,”ⁱ the hospitals began using this process as an opportunity to argue for more limits on patients’ legal rights, using fabricated analysis and scoring by discredited insurance consulting firms like Millimanⁱⁱ to justify their position. While dominated by industry lobbyists, this Task Force did include members who were able to counter the fabricated information presented by hospital and industry lobbyists, and better inform the entire process. Specifically, these included three consumer and patient advocates, and three members of bar associations, including the New York State Bar Association.

August, 2007 - New York State Comptroller Thomas P. DiNapoli issued a report regarding the effectiveness of the Department of Health’s Office of Professional Medical Conduct (OPMC) in receiving, investigating and tracking complaints of suspected misconduct by doctors. The report revealed that OPMC badly failed to do its job disciplining even the state’s worst doctors.ⁱⁱⁱ

October, 2007- State insurance representatives testified before the Task Force that the “frequency of medical malpractice insurance claims against doctors, nurses and other medical professionals are at a new low and has been stable for the third straight year. Severity is increasing at just 3 percent annually.”

October 15, 2007 - The Center for Health Workforce, part of the School of Public Health, University at Albany, State University of New York- an academic institution that monitors physician supply – testified before the Task Force that New York is “the most richly supplied state in the nation in terms of the number of physicians in practice relative to the state population.”^{iv}

October 2007 – A report by Health Grades Inc., a company that measures health care safety, found that nearly half of New York’s hospitals ranked among the lowest percentile nationally in patient safety.^v

2008 -2009 - The Task Force stopped meeting and never issued a report; Governor Patterson signed two different pieces of legislation to freeze medical malpractice insurance rates.

2011 – Governor Andrew Cuomo appointed a Medicaid Redesign Team. Like Governor Spitzer’s Task Force, this Team is dominated by hospital and industry lobbyists. While the cause of the State’s Medicaid problems have nothing to do with any lawsuit or a claims “crisis,”^{vi} the hospitals are again using this process as an opportunity to argue for more limits on patients’ legal rights (including brutal “caps” on non-economic compensation and a birth injury fund that will severely burden parents). What’s more, they are again apparently circulating fabricated analysis and scoring by the discredited insurance consulting firm Milliman to justify their position. However, unlike Governor Spitzer’s Task Force, Cuomo’s Team includes no members with any expertise on medical malpractice issues, let alone anyone representing the judicial branch of government, to counter the hospital and industry lobbyists and inform the process.

Moreover, this process is completely closed so only the sketchiest of details of the Team’s medical malpractice proposal (#131) are being made available publicly, preventing any ability for outside experts, including those who served on earlier task forces, to vet them.

NOTES

ⁱ See, e.g., Public Citizen Study, “A Self-Inflicted Crisis: New York’s Medical Malpractice Insurance Troubles Caused by Flawed State Rate Setting and Raid on Rainy Day Fund” (November 2007).

ⁱⁱ For example, in 2007, Washington State voters passed by a huge 58-42 margin, an initiative requiring that insurance companies act in good faith or face huge damages. The leading voice in favor of R-67 was the State’s insurance commissioner, Mike Kreidler. The leading opposition, the insurance industry, based their position on a discredited Milliman analysis, which both Kreidler and the voters shunned.

ⁱⁱⁱ Office of the NY State Comptroller Report, “Department of Health: Office of Professional Medical Conduct Complaints and Investigations Process” (August 9, 2007).

^{iv} *Physician Supply and Demand Indicators in New York, 2000-2005: A Summary of Trends for 35 Medical Specialties*. Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany.

^v Health Grades Inc., “The Tenth Annual Health Grades Hospital Quality in America Study” (October 2007)

^{vi} Letter from NYPIRG et al to Medicaid Design Team.