



MEDICAL SOCIETY OF THE STATE OF NEW YORK

Wrongful Death Expansion Bill Talking Points

We are here to urge Governor Kathy Hochul to VETO the Wrongful Death Bill (S74A) because it puts New Yorkers healthcare services at risk.

First, please know that MSSNY succeeded on numerous other important physician and patient protection bills as part of our proactive agenda this legislative season.

- MSSNY fought to pass telehealth payment parity, new managed care reforms, health insurance coverage expansions for those in need, expanded medical school debt relief for doctors in underserved communities, and much more as outlined in our MSSNY Capitol Updates.

But this wrongful death bill also passed.

- The Bill passed despite stiff opposition from MSSNY, special societies, hospitals, clinics, businesses, insurers and county and local governments (including the City of New York).
- We now need to redouble our efforts to stop this disastrous Bill.

The Bill is an extreme, drastic overhaul of current law. If enacted, it would:

- *Expand non-economic damages* to include grief and anguish and “disorders caused by such grief or anguish”, among other damages.
- *Expand with no limit the universe of individuals who may recover damages* to include the undefined and unclear term “Close Family Members”.
- *Nearly double the statute of limitations* for wrongful death actions from 2 years to 3.5 years.

The Bill will impact all physicians

- *Private practice physicians’* medical malpractice insurance rates will increase 39.5%, according to a Milliman study done by MSSNY and the hospital associations.
- *Employed physicians* will see their employers’ costs increase by as much as 45.3% for self-insured hospitals and large groups, reducing employers’ ability to pay you and other staff.
- *New York already has by far the highest liability awards and costs in the US.*

As a result, patient access to care will be reduced – disproportionately in underserved communities.

- *More than 30 hospitals already receive extraordinary financial assistance* from NY State to sustain patient care services. If the Governor signs the Bill, we risk hospital, emergency room, primary care and urgent care closures.
- *Safety net care providers in underserved communities will be most impacted*, placing those with below average access to quality care at risk and compromising the social equity the Bill’s proponents seek to achieve.

- *The Bill will reverse NY State’s current investments in our healthcare workforce, threaten retention and growth in this sector of our economy and harm New Yorkers across the State by jeopardizing access to vital health care services.*

It is misleading to say New York’s wrongful death law is an outlier:

- *Bill proponents fail to mention that most states that have adopted changes similar to the Bill (32 of 41) also have caps on economic damages (unlike New York).*
- *NY is an outlier when it comes to the size of malpractice payouts, leading the nation with payouts totaling \$37.04 per capita (with NJ a distant second at \$28.92 per capita).¹ In 2019, New York once again had the highest cumulative medical liability payouts of any state in the country, 68% more than the state with the second highest amount (Pennsylvania). It also had the highest per capita liability payment, 10% more than the 2nd highest state (Massachusetts).²*
- *NY is regularly rated among the worst states to practice medicine. [Best & Worst States for Doctors \(wallethub.com\)](#).*
- *NY law already covers many wrongful death damages, including: loss of guidance and parental support to children; loss of love, society, protection, comfort, companionship, and consortium; and loss of spousal services such as cooking, cleaning, shopping, child care, etc. All these damages are subject to 9% statutory annual interest calculated from date of death to final judgment.*

What’s Needed: A Veto and More Clarification

- The Bill language is too vague about who’s eligible to recover damages and the types of damages recoverable.
- The Bill also lacks important damages caps adopted by other states with similar laws.
- Governor Hochul’s veto offers the Legislature the opportunity to clarify ambiguous elements in the Bill and bring NY into alignment with other states that have applied necessary and reasonable restrictions to similar legislation.
- ***We need every physician leader to reach out to our MSSNY members, affiliates and allies to encourage them to act through our Grassroots Action Center (<https://p2a.co/dbat2kp>) by urging Governor Hochul to veto the Wrongful Death Bill (S74A). You can also call the Governor’s Office at***

¹ Crain’s Health Pulse, April 27, 2022, Source: Dolman Law Group, based on National Practitioner Data Bank, <https://www.npdb.hrsa.gov/analysistool/>

² Report from Deidrich Healthcare ([2020 Medical Malpractice Payout Analysis - Diederich Healthcare | Diederich Healthcare](#)).