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Hospitals get half a fix for medical malpractice woes

State budget does not offer health care providers their hoped-for \$250,000 cap on pain and suffering. But a new fund could ease financial burden from some cases involving injured infants.

By Barbara Benson | March 28, 2011

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After years of failing to advance medical-malpractice reforms in New York, hospitals finally had partial success with the state budget agreement hammered out over the weekend.

Overall, the proposed budget cuts total state spending on Medicaid by \$2.8 billion for the fiscal year that starts April 1. As expected, the budget does not include a controversial, \$250,000 cap on non-economic damages in malpractice cases. The provision to limit pain and suffering awards came up against heavy lobbying from trial lawyers and the New York State Bar Association.

But a proposal to create a new medical indemnity fund for cases involving neurologically impaired infants did survive the budget battle. The details of the fund are still being negotiated and must be finalized by a midnight deadline.

When it was proposed by the state's Medicaid Redesign Team, the neurologically impaired infant medical indemnity fund was seen as a way to help reduce hospitals' medical-malpractice costs. In 2009, the state's hospitals spent \$1.6 billion to cover medical-malpractice expenses, or about 3% of their revenue.

At a February meeting of the Medicaid Redesign Team, Kenneth Raske, president of the Greater New York Hospital Association, pressed for the indemnity fund for neurologically impaired infants. He said about 50% of med-mal costs are due to such cases. The reform could lower the cost of health care providers' med-mal insurance coverage by as much as 25%, he said.

Some 70% of all births in Brooklyn and the Bronx are covered by Medicaid. The state estimates that among obstetrical cases, Medicaid is the insurer for an estimated 50% of deliveries and covers the medical costs of a significant number of children affected by neurological impairment, both before and after a settlement or award. The fund will provide payment for medical expenses of eligible children.

The state estimates that the fund would save it \$75 million annually from repayment of Medicaid expenses. It also expects lower expenditures in future medical expenses of children covered by the fund, starting with \$5 million in the first year and \$37.5 million annually by the eighth year.

One issue that is still being negotiated is how the fund will be capitalized. Originally, the Medicaid Redesign Team proposed the fund could be capitalized by an assessment on all insurers' gross premiums, but that was seen as a new tax.

Meanwhile, the failure of the \$250,000 cap on pain and suffering was a blow to the state's hospital industry, which has agreed to a global cap on state Medicaid expenditures of approximately \$15 billion.



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In February, the Hospital Association said in a statement that both medical-malpractice proposals were a priority: “With major hospital cuts and tax increases also on the table, it is extremely important that hospitals be given medical-malpractice relief as part of this overall package.”

The \$250,000 cap also was important to the Business Council of New York State, which as an employer group is concerned about the high cost of health care in the state. “Obviously, we're disappointed the med-mal cap was not part of the budget,” said a spokesman for the Business Council, which otherwise supports the budget as “truly historic. ... We think the need for the cap was very important to producing savings long-term. [Policymakers] are going to have to revisit this issue.”

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