A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the public health law, in relation to consolidat-
ing the excess medical malpractice liability coverage
pool; and to repeal section 18 of chapter 266 of the laws
of 1986, amending the civil practice law and rules and
other laws relating to medical and dental malpractice,
relating thereto

The People of the State of New York, represented in Senate and Assem-
by, do enact as follows:

1 Section 1. Section 18 of chapter 266 of the laws of 1986, amending the
civil practice law and rules and other laws relating to medical and
dental malpractice, is REPEALED.

2 § 2. Any rules or regulations promulgated by the superintendent of
insurance or the commissioner of health pursuant to the provisions of
section 18 of chapter 266 of the laws of 1986 shall survive such repeal,
and shall be applicable to the excess medical malpractice liability
coverage pool and related provisions as created by section three of this
act.

The repeal of section 18 of chapter 266 of the laws of 1986 as effec-
tuated by section one of this act shall not affect the rights or obli-
gations of any physician, dentist, insurer or general hospital related
to excess or equivalent excess coverage purchased pursuant to the
provisions of section 18 of chapter 266 of the laws of 1986 that were in
effect prior to the date this act takes effect; nor shall the repeal of
section 18 of chapter 266 of the laws of 1986 as effectuated by section
one of this act affect the rights or obligations of any claimant against
excess or equivalent excess coverage that was purchased pursuant to the
provisions of section 18 of chapter 266 of the laws of 1986 that were in
effect prior to the date this act takes effect.

§ 3. The public health law is amended by adding a new section 23 to
read as follows:

§ 23. Excess medical malpractice liability coverage pool.  1. The
hospital excess liability pool established by subdivision five of
section eighteen of chapter two hundred sixty-six of the laws of nine-
teen hundred eighty-six, as amended by chapter two hundred fifty-six of
the laws of nineteen hundred ninety-three shall be continued and is
hereby renamed the "excess medical malpractice liability coverage pool."
The excess medical malpractice liability coverage pool shall be overseen
by the superintendent of financial services and the commissioner, and
shall consist of funds currently in or owed to the excess liability pool
as of the effective date of this section, and funds appropriated for the
purposes of the excess medical malpractice liability coverage pool.

2. Notwithstanding any inconsistent provision of sections one hundred
twelve and one hundred sixty-three of the state finance law, or sections
one hundred forty-two and one hundred forty-three of the economic devel-
opment law, or any other contrary provision of law, the superintendent
of financial services may enter into a contract or contracts under this
subdivision without a competitive bid or request for proposal process,
provided, however, that:

(a) The department of financial services shall post on its website,
for a period of no less than thirty days:

(i) A description of the proposed services to be provided pursuant to
the contract or contracts;

(ii) The criteria for selection of a contractor or contractors;
(iii) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) All reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the superintendent of financial services; and

(c) The superintendent of financial services shall select such contractor or contractors that, in the superintendent of financial services' discretion, are best suited to serve the purposes of this subdivision.

3. (a) The superintendent of financial services and the commissioner or their designees shall, from funds available in the excess medical malpractice liability coverage pool created pursuant to subdivision one of this section, purchase a policy or policies for excess insurance coverage, or for equivalent excess coverage, for medical or dental malpractice occurrences between the first of July of a given year and ending the thirtieth of June of the next succeeding year, or to reimburse a general hospital where the hospital purchases equivalent excess coverage for medical or dental malpractice occurrences between the first of July in a given year and ending the thirtieth of June in the succeeding year for eligible physicians or dentists as certified by a general hospital licensed pursuant to article twenty-eight of this chapter for each such period or periods.

(b) Such policies may be purchased pursuant to section five thousand five hundred two of the insurance law, or from an insurer, duly licensed
in this state to write personal injury liability insurance and actually
writing medical malpractice insurance in this state.

(c) No single insurer shall write more than fifty percent of the total
excess premium for a given policy year, unless upon request by the
insurer, the superintendent of financial services in writing determined
that exceeding such limit would not be harmful to the policyholder and
the people of the state.

4. (a) For the purposes of this section, "eligible physician or
dentist" shall mean a physician or dentist, excluding a faculty prac-
tice physician or dentist, who:

(i) is primarily engaged in the private practice of medicine, or is an
employee of an eligible hospital;

(ii) has professional privileges in the general hospital that is
certifying the physician's or dentist's eligibility;

(iii) is providing emergency medical or dental services, including
emergency medical screening examinations, treatment for emergency
medical conditions, including labor and delivery, or treatment for emer-
gency dental conditions to persons in need of such treatment at the
general hospital that is certifying their eligibility; and

(iv) (l) has in force coverage under an individual policy or group
policy written in accordance with the provisions of the insurance law,
paid for solely by such physician or dentist or his or her private prac-
tice, from an insurer licensed in this state to write personal injury
liability insurance, of primary malpractice insurance coverage in
amounts of no less than one million three hundred thousand dollars for
each claimant and three million nine hundred thousand dollars for all
claimants under that policy and covering the same time period as the
excess insurance coverage;
(2) in the case of an employee of an eligible hospital, has in force an individual policy or group policy written in accordance with the provisions of the insurance law, partially or fully purchased by an eligible hospital, from an insurer licensed in this state to write personal injury liability insurance, of primary malpractice insurance coverage in amounts of no less than one million three hundred thousand dollars for each claimant and three million nine hundred thousand dollars for all claimants under that policy and covering the same time period as the excess insurance coverage; or

(3) is endorsed as an additional insured under a voluntary attending physician ("channeling") program previously permitted by the superintendent of insurance and covering the same time period as the equivalent excess coverage.

(b) The excess coverage or equivalent excess coverage shall, when combined with the physician's or dentist's primary malpractice insurance coverage or coverage provided through a voluntary attending physician ("channeling") program previously permitted by the superintendent of insurance, total an aggregate level of coverage of two million three hundred thousand dollars for each claimant and six million nine hundred thousand dollars for all claimants with respect to occurrences during the policy period.

(c) The equivalent excess coverage shall provide for payment only after coverage available through the voluntary attending physician ("channeling") program has been exhausted during the policy period.

(d) In the event that an eligible physician or dentist has professional privileges in more than one general hospital, the certification of the physician's or dentist's eligibility shall be provided by the general hospital designated by such physician or dentist as the
hospital with which the physician or dentist is primarily affiliated, as
may be defined pursuant to regulations promulgated by the commissioner.

5. For the purposes of this section the term "eligible hospital" shall
mean a general hospital that has been determined by the commissioner in
consultation with the superintendent of financial services to:

(a) have adequately demonstrated that high costs for, or lack of
availability of, medical malpractice liability coverage have impaired
the hospital's ability to attract and retain physicians and dentists
practicing in fields for which there is high demand based on the ratio
of patient volume to available physicians; and

(b) be a vital access provider; and

(c) have adequately demonstrated that the general hospital is in
financial distress.

6. For the purposes of this section "equivalent excess coverage" shall
mean a policy or policies of insurance for a physician or dentist
insured under a voluntary attending physician ("channeling") program
previously permitted by the superintendent of insurance insuring a
physician or dentist against medical or dental malpractice with an
aggregate level of coverage providing not less than two million three
hundred thousand dollars for each claimant and six million nine hundred
thousand dollars for all claimants during the policy period. Such cover-
age limits shall be reduced by payments made on behalf of such physician
or dentist under a hospital professional liability policy written pursu-
ant to a voluntary attending physician ("channeling") program previously
permitted by the superintendent of insurance, in an amount not to exceed
two million three hundred thousand dollars for each claimant and six
million nine hundred thousand dollars for all claimants during such
policy period for each such physician or dentist.
7. For the purposes of this section, a physician or dentist in the private practice of medicine shall mean a physician or dentist who receives the largest percentage of his or her income derived from the provision of medical services, from bills:

(a) issued directly by the physician or dentist;

(b) issued directly by a corporation, organized for the purpose of providing medical or dental care, that is not owned by, and is not a subsidiary of, a general hospital, or issued by a vendor contracted by that corporation for the purposes of billing, for services rendered by the physician or dentist; or

(c) issued by a general hospital for services rendered by a physician or dentist who has in force an individual medical malpractice insurance policy that is purchased solely by the physician or dentist or an organization described in paragraph (b) of this subdivision, from an insurer licensed in this state to write personal injury liability insurance, of primary medical malpractice insurance coverage in amounts of no less than one million three hundred thousand dollars for each claimant and three million nine hundred thousand dollars for all claimants.

8. (a) To the extent funds available to the excess medical malpractice liability coverage pool pursuant to subdivision one of this section are insufficient to meet the costs of excess insurance coverage or equivalent excess coverage for coverage periods during the period between July first of a given year and June thirtieth of the next succeeding year, beginning July first, two thousand twelve and ending June thirtieth, two thousand fourteen each physician or dentist for whom a policy for excess insurance coverage or equivalent excess coverage is purchased for such period shall be responsible for payment to the provider of excess insurance coverage or equivalent excess coverage of an allocable
share of such insufficiency, based on the ratio of the total cost of
such coverage for such physician or dentist to the sum of the total cost
of such coverage for all physicians or dentists applied to such insuffi-
ciency.

(b) Each provider of excess insurance coverage or equivalent excess
coverage covering the period between July first of a given year and June
thirtieth of the next succeeding year, beginning July first, two thou-
sand twelve and ending June thirtieth, two thousand fourteen shall noti-
fy a covered physician or dentist by mail, mailed to the address shown
on the last application for excess insurance coverage or equivalent
excess coverage, of the amount due to such provider from such physician
or dentist for such coverage period determined in accordance with para-
graph (a) of this subdivision. Such amount shall be due from such physi-
cian or dentist to such provider of excess insurance coverage or equiv-
alent excess coverage in a time and manner determined by the
superintendent of financial services.

(c) If a physician or dentist liable for payment of a portion of the
costs of excess insurance coverage or equivalent excess coverage cover-
ing the period between July first of a given year and June thirtieth of
the next succeeding year, beginning July first, two thousand twelve and
ending June thirtieth, two thousand fourteen determined in accordance
with paragraph (a) of this subdivision fails, refuses or neglects to
make payment to the provider of excess insurance coverage or equivalent
excess coverage in such time and manner as determined by the superinten-
dent of financial services pursuant to paragraph (b) of this subdivi-
sion, excess insurance coverage or equivalent excess coverage purchased
for such physician or dentist in accordance with this section for such
coverage period shall be cancelled and shall be null and void as of the
first day on or after the commencement of a policy period where the
liability for payment pursuant to this subdivision has not been met.
(d) Each provider of excess insurance coverage or equivalent excess
coverage shall notify the superintendent of financial services and the
commissioner or their designee of each physician and dentist eligible
for purchase of a policy for excess insurance coverage or equivalent
excess coverage covering the period between July first of a given year
and June thirtieth of the next succeeding year, beginning July first,
two thousand twelve and ending June thirtieth, two thousand fourteen
that has made payment to such provider of excess insurance coverage or
equivalent excess coverage in accordance with paragraph (b) of this
subdivision and of each physician and dentist who has failed, refused or
neglected to make such payment.
(e) A provider of excess insurance coverage or equivalent excess
coverage shall refund to the excess medical malpractice liability cover-
age pool any amount allocable to the period between July first of a
given year and June thirtieth of the next succeeding year, beginning
July first, two thousand twelve and ending June thirtieth, two thousand
fourteen received from the excess medical malpractice liability coverage
pool for purchase of excess insurance coverage or equivalent excess
coverage covering the period between July first of a given year and June
thirtieth of the next succeeding year, beginning July first, two thou-
sand twelve and ending June thirtieth, two thousand fourteen for a
physician or dentist where such excess insurance coverage or equivalent
excess coverage is cancelled in accordance with paragraph (c) of this
subdivision.
(f) A policy or policies of excess medical malpractice coverage issued
to or on behalf of an eligible physician or dentist pursuant to this
section shall be written upon and give effect to the choice of an insurer 
by the physician or dentist, provided, however, that such choice 
shall be made among insurers writing excess coverage policies in accord-
ance with this section and further provided that no physician or dentist 
shall be compelled to be insured by an insurer providing primary cov-
age nor shall such insurer providing such primary coverage be compelled 
to write coverage of such eligible physician or dentist for such excess 
coverage, in which case the eligible physician or dentist may select 
another insurer writing such excess coverage in accordance with this 
section.

9. Any insurer issuing policies of excess or equivalent excess cover-
age in accordance with subdivision one of this section may, notwith-
standing any provisions of the insurance law, return to the state, in 
whole or in part, the moneys reimbursed by the state in accordance with 
this section for specified policy periods, upon a certification to the 
insurer by the superintendent of financial services that there is a 
reasonable likelihood on an actuarial basis that the moneys returned 
will not be needed to pay for the expected liabilities incurred by the 
insurer for such policy periods.

10. The superintendent of financial services and the commissioner may 
adopt and may amend such regulations as are necessary to effectuate the 
provisions of this section.

§ 4. This act shall take effect immediately.