§ 5502. Medical malpractice insurance association. (a) The medical malpractice insurance association is continued consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, personal injury liability insurance but excluding assessment cooperative fire insurance companies transacting business pursuant to article sixty-six of this chapter. Every such insurer shall be and remain a member of the association as a condition of its authority to continue to transact personal injury liability insurance in this state.

(b) The association shall be a non-profit unincorporated association constituting a legal entity separate and distinct from its members. All funds and reserves of the association shall be separately held and invested. It shall maintain complete accounts of all monies received and all losses and expenses incurred in connection with its operations, including investment income on policyholder-supplied funds. For the purpose of any contributions required by insurers to the property/casualty insurance security fund pursuant to article seventy-six of this chapter, and for the purpose of the protection afforded policyholders by such fund, the association is an authorized insurer. The association shall include in the premiums charged for medical malpractice insurance an amount sufficient to offset any such contributions.

(c) (1) The purpose of the association is to provide, for the period July first, nineteen hundred seventy-five through June thirtieth, two thousand one, a market for medical malpractice insurance pursuant to this article and subject to regulation pursuant to section two thousand three hundred seventeen of this chapter. If, after June thirtieth, two thousand one, the surcharges on premiums imposed pursuant to section forty, as amended, of chapter two hundred sixty-six of the laws of nineteen hundred eighty-six, by the superintendent to satisfy any actuarially projected deficiency that is attributable to the premium levels for policies providing coverage for physicians and surgeons medical malpractice for the periods commencing July first, nineteen hundred eighty-five and ending June thirtieth, two thousand one, are still in effect or may still be reasonably imposed, the association shall continue in existence until June thirtieth next following such time as such surcharges are no longer imposed or may no longer be

reasonably imposed.

** (2) (A) The association shall, no later than December thirtieth, nineteen hundred ninety-nine, submit to the superintendent for approval a plan for the final dissolution of the association, including a transfer or extinguishment of all liabilities of the association and a plan for the servicing of existing policies of the association. The dissolution of the association and cessation of its activities shall be fully accomplished and the association shall be deemed dissolved at such time and under such conditions as the superintendent deems proper; provided, however, that all policies of insurance written by the association shall expire or be transferred prior to such dissolution.

(B) In the preparation of a plan for the final dissolution of the association, the board of directors of the association shall: (i) solicit proposed plans for the dissolution of the association from at least three outside entities; (ii) arrange for an independent actuarial review of the association, its operations, assets and liabilities; and (iii) recommend, by a majority vote of its board of directors, that proposal which maximizes the value of the association to the state. The association shall thereafter file all proposed plans, along with the plan recommended by the board, to the superintendent for approval.

(C) (i) The superintendent shall, by April thirtieth, two thousand, review all proposed plans, along with the recommended plan, filed by the board of directors of the association with the superintendent and may approve a plan of dissolution. The superintendent may determine to add provisions which may vary from those submitted by the association or delete others as proposed by the association or adopt an alternate plan. Any plan of dissolution of the association which provides for the sale or transfer of its operations, assets and/or liabilities to a private entity shall do so net of any appropriated and encumbered amounts required by subsection (c) of section five thousand five hundred sixteen, subsection (c) of section five thousand five hundred sixteen-a, subsection (c) of section five thousand five hundred sixteen-b, subsection (c) of section five thousand five hundred sixteen-c and subsection (c) of section five thousand five hundred sixteen-e of this article and, in the event such plan is approved and implemented, such sections five thousand five hundred sixteen, five thousand five hundred sixteen-a, five thousand five hundred sixteen-b, five thousand five

hundred sixteen-c, and five thousand five hundred sixteen-e are hereby deemed repealed. A public hearing shall be held to examine the proposed plan of dissolution, the plans reviewed, and the superintendent's recommended plan of approval. Such public hearing shall be held not later than thirty days prior to the superintendent's approval of that plan which maximizes the value of the association to the state while not impairing or impeding the operation of the voluntary medical malpractice insurance market or limiting the access to medical malpractice coverage for health care practitioners or facilities insured by the association. Upon approval, the superintendent shall certify the estimated amount of funds to be transferred pursuant to subsection (b) of section five thousand five hundred sixteen-f of this article and shall transmit such certification to the director of the division of the budget.

To assist in making such determination, the superintendent may appoint one or more qualified disinterested persons or institutions as consultants to advise on any matters related to the dissolution. The appointment of a consultant shall be in writing and shall set forth the duties and responsibilities of the consultant. The association shall provide access to the superintendent, and any consultants appointed by the superintendent, to its books and records and any information in its possession necessary to make valuations and determinations required by this section. For the purposes of this section, all expenses and costs associated with such appointment shall be deemed and considered expenses pursuant to section three hundred thirteen of this chapter.

(ii) (I) Any action challenging the validity of or arising out of acts taken or proposed to be taken under this paragraph two of this subsection must be commenced within two months after a copy of the plan of final dissolution of the association, with the superintendent's approval endorsed thereon, has been filed in the office of the superintendent.

(II) In any action arising out of acts taken or proposed to be taken under this paragraph two of this subsection, the superintendent shall be entitled to, at any stage of the proceedings before final judgment, petition the court to give security for the costs and charges which may be incurred by the superintendent in connection with such action and by any other parties defendant in connection therewith or for which the

superintendent or the association may become liable under this chapter, under any contract or otherwise by law, to which security the superintendent shall have recourse in such amount as the court having jurisdiction of such action shall determine upon termination of such action. The amount of security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive.

(III) Any person aggrieved by any act taken or order, regulation, or rule issued pursuant to this paragraph two of this subsection may petition for judicial review of such acts taken or orders, regulations or rules, pursuant to the limitations period prescribed in clause (I) of item (ii) of this subparagraph. The petition shall be brought in the appellate division of the supreme court in the third judicial department. The jurisdiction of the appellate division of the supreme court in the third judicial department shall be exclusive and its judgment and order shall be final subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division and by the court of appeals as expeditiously as possible and with lawful precedence over other matters. Acts taken or orders, regulations or rules issued pursuant to this section shall not be stayed or enjoined except upon application to the appellate division of the supreme court in the third judicial department after notice to the superintendent and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success and will suffer irreparable harm if the stay or injunction is not granted.

(IV) Provided, however, that if a determination by a judicial proceeding prevents the final consummation of the determination by the superintendent that the association be dissolved, and if the amounts required to be transferred and deposited from the association to the miscellaneous special revenue fund pursuant to the requirements of section five thousand five hundred sixteen-f of this article are not in fact so transferred and deposited in the miscellaneous special revenue fund, then the provisions of subsections (a) through (f) of section nine thousand one hundred eleven-c of this chapter shall become operative and

the tax imposed by subsections (a) through (e) of such section shall be imposed. Provided, further, however, that if there is thereafter a final judicial determination that the final consummation of the dissolution of the association may be effectuated, and the full transfer and deposit shall be made to the miscellaneous special revenue fund, then in such event the amount of the tax imposed and paid pursuant to the provisions of subsections (a) through (e) of section nine thousand one hundred eleven-c of this chapter shall be returned to the companies that paid such assessment on a pro rata basis, in a manner consistent with the procedures set forth in subsections (f) and (g) of section nine thousand one hundred eleven-c of this chapter.

* (D) Prior to July first, two thousand, the superintendent shall, after a public hearing to be held not less than thirty days before such promulgation, promulgate regulations prescribing a plan for the equitable distribution to authorized medical malpractice insurers writing such coverage in the state the insureds of the association and health care practitioners and facilities which are otherwise unable to secure coverage in the voluntary market following the dissolution of the association. Such plan shall provide that upon initial distribution to the voluntary market the insureds of the association receive policies in the voluntary market with provisions and at a rate which are at least as favorable to the insured as those which they would have received if they were issued a renewal policy by the association, provided, however, that subsequent to the initial distribution, the plan shall not be required to make available a second layer of excess medical malpractice insurance to insureds. Such plan shall also ensure that all health care practitioners or facilities have access to medical malpractice insurance from an authorized insurer pursuant to the provisions of this chapter. Such plan may also provide for, and the superintendent may designate, in lieu of the plan for the equitable distribution of policies from the association and the availability of coverages to health care practitioners and facilities, a single entity or entities to provide such coverages consistent with such a plan if the superintendent determines that such entity or entities can provide the coverages necessary to meet the purposes and objectives of an equitable plan of distribution were it to have been effectuated. Notice of the hearing required by this subparagraph shall be no less than thirty days before

the date of the hearing and shall include a summary of the plan proposed by the superintendent.

* NB Effective until July 1, 2028

* (D) Prior to July first, two thousand, the superintendent shall, after a public hearing to be held not less than thirty days before such promulgation, promulgate regulations prescribing a plan for the equitable distribution to authorized medical malpractice insurers writing such coverage in the state the insureds of the association and health care practitioners and facilities which are otherwise unable to secure coverage in the voluntary market following the dissolution of the association. Such plan shall provide that upon initial distribution to the voluntary market the insureds of the association receive policies in the voluntary market with provisions and at a rate which are at least as favorable to the insured as those which they would have received if they were issued a renewal policy by the association. Such plan shall also ensure that all health care practitioners or facilities have access to medical malpractice insurance from an authorized insurer pursuant to the provisions of this chapter. Such plan may also provide for, and the superintendent may designate, in lieu of the plan for the equitable distribution of policies from the association and the availability of coverages to health care practitioners and facilities, a single entity or entities to provide such coverages consistent with such a plan if the superintendent determines that such entity or entities can provide the coverages necessary to meet the purposes and objectives of an equitable plan of distribution were it to have been effectuated. Notice of the hearing required by this clause shall be no less than thirty days before the date of the hearing and shall include a summary of the plan proposed by the superintendent.

* NB Effective July 1, 2028

** NB The plan referred to herein is Title 11 NYCRR, Chapter XX, Part 430

(d) Upon dissolution, the association shall not resume underwriting operations for physicians, dentists, podiatrists, certified nurse-midwives, certified registered nurse anesthetists or for hospitals respectively, until the superintendent, after consultation with the commissioner of health, has determined that medical malpractice insurance is not readily available for physicians, dentists,

podiatrists, certified nurse-midwives, certified registered nurse anesthetists or for hospitals, as the case may be, in the voluntary market and has approved or promulgated a new plan of operation. If the superintendent determines during such period that insurance is readily available for physicians, dentists, podiatrists, certified nurse-midwives, certified registered nurse anesthetists or for hospitals, as the case may be, in the voluntary market, the superintendent shall not authorize its underwriting operations for the respective categories.

(e) The association shall, pursuant to the provisions of this article and the plan of operation with respect to medical malpractice insurance, have the power:

(1) To issue, or to cause to be issued, policies of insurance to physician, dentist and podiatrist applicants subject to primary limits specified in the plan of operation not in excess of one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year, and excess coverage as provided in this paragraph. Each applicant shall be entitled to purchase a policy providing primary limits not to exceed one million dollars for each claimant and three million dollars for all claimants in any one year. In addition, any applicant insured by the association in an amount equal to or greater than one million dollars for each claimant and three million dollars for all claimants in any one year, or any other applicant covered under a policy or policies providing such primary levels of insurance against liability for medical, dental or podiatric malpractice that is issued by an authorized insurer, shall be entitled to purchase a policy from the association providing excess coverage of at least one million dollars per claimant and three million dollars for all claimants in any one year. The association shall, subject to the approval of the superintendent, make available, and if requested by the applicant, provide additional excess coverage in an amount requested by such applicant. With respect to the coverage required to be made available on and after July first, nineteen hundred eighty-five by this paragraph, the superintendent shall establish and promulgate rates to be charged for such excess coverage and additional excess coverage and shall require that the association accept payment for such coverage from the hospital excess liability pool pursuant to a

payment schedule that is consistent with the receipt of funds by such pool from the hospital reimbursement system. Rates for excess coverage and additional excess coverage shall not be subject to the stabilization reserve fund charge established by section five thousand five hundred nine of this article.

(2) To issue, or cause to be issued, policies of insurance, including incidental liability coverages, to hospital applicants subject to limits specified in the plan of operation with limits not in excess of one million dollars for each claimant and ten million dollars for all claimants in any one year; provided that policies for coverage in excess of one million dollars for each claimant and three million dollars for all claimants in any one year shall be issued only upon the obtaining of reinsurance for such excess coverage for the term of the policy and the excess coverage shall remain in effect only so long as reinsurance is in effect. The association shall obtain such reinsurance, if available, for coverage in excess of one million dollars for each claimant and three million dollars for all claimants in any one year. If the association fails to obtain such reinsurance, the superintendent may order it to do so for the term of the policy from sources found by him to be available. The rates charged by the association for coverage in excess of three million dollars shall not be subject to prior approval by the superintendent, and shall equal the charges to the association for such reinsurance.

(3) To underwrite such insurance and to adjust and pay losses or to appoint service companies to perform those functions.

(4) To assume reinsurance from its members.

(5) To cede reinsurance.

(6) To make the lump sum payments provided for in subdivision (b) of section five thousand thirty-six of the civil practice law and rules and receive the periodic payments due under the annuity contract provided for therein.