S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 12, 2016

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to payments from the New York state medical indemnity fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2999-j of the public health law is amended by adding two new subdivisions 2-a and 7-a to read as follows:

2-A. A REQUEST FOR REVIEW OF A DENIAL OF A CLAIM OR A DENIAL OF A REQUEST FOR PRIOR AUTHORIZATION FOR THE PAYMENT OR REIMBURSEMENT FROM THE FUND FOR QUALIFYING HEALTH CARE COSTS MUST BE MADE BY THE CLAIMANT NO LATER THAN SIXTY DAYS FROM RECEIPT OF THE DENIAL AND, AT A CLAIMANT'S OPTION, BY EITHER (A) MAKING APPLICATION TO THE COURT WHEREIN THE JUDGEMENT WAS AWARDED OR THE CASE WAS SETTLED, OR (B) FOLLOWING THE PROCESS ESTABLISHED BY REGULATIONS OF THE COMMISSIONER FOR THE ADMINISTRATIVE REVIEW OF A DENIAL OF A CLAIM OR REQUEST FOR PRIOR AUTHORIZATION.

7-A. A REQUEST FOR A REVIEW OF A DETERMINATION BY THE FUND ADMINISTRATOR THAT THE RELEVANT PROVISIONS OF SUBDIVISION SIX OF THIS SECTION HAVE NOT BEEN MET AND/OR THAT THE PLAINTIFF OR CLAIMANT IS NOT A QUALIFIED PLAINTIFF MAY BE MADE BY ANY OF THE PARTIES, NO LATER THAN SIXTY DAYS FROM RECEIPT OF THE DENIAL, BY MAKING APPLICATION TO THE COURT WHEREIN THE JUDGMENT WAS AWARDED OR THE CASE WAS SETTLED.

S 2. Subdivisions 2 and 4 of section 2999-j of the public health law, as added by section 52 of part H of chapter 59 of the laws of 2011, are amended to read as follows:

2. The provision of qualifying health care costs to qualified plaintiffs shall not be subject to prior authorization, except as described by the commissioner in regulation; provided, however, that such regulation shall not prevent qualified plaintiffs from receiving care or assistance that would, at a minimum, be authorized under the medicaid program; and provided, further, that if any prior authorization is required by such regulation, the regulation shall require that requests for prior authorization be processed within a reasonably prompt period of time and, SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO-A OF THIS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SECTION, shall identify a process for prompt administrative review of any denial of a request for prior authorization.

4. The amount of qualifying health care costs to be paid from the fund shall be calculated[: (a) with respect to services provided in private physician practices on the basis of one hundred percent of the usual and customary rates,] ON THE BASIS OF ONE HUNDRED PERCENT OF THE USUAL AND CUSTOMARY RATES AS DEFINED BY FAIR HEALTH, INC., IN ITS USUAL, CUSTOMARY AND REASONABLE DATABASE AT THE TIME OF BILLING, AND IF NO SUCH RATES ARE AVAILABLE, as defined by the commissioner in regulation[; or (b) with respect to all other services, on the basis of Medicaid rates of reimbursement or, where no such rates are available, as defined by the commissioner in regulation] THAT IS CONSISTENT WITH PAYMENT OF ONE HUNDRED PERCENT OF THE USUAL AND CUSTOMARY RATES CHARGED BY PROVIDERS OF SUCH SERVICES IN THE GEOGRAPHIC AREA WHERE THE SERVICE IS PROVIDED.

S 3. Subdivision 1 of section 2999-h of the public health law, as added by section 52 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

1. "Birth-related neurological injury" means an injury to the brain or spinal cord of a live infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation or by other medical services provided or not provided during delivery [admission] that rendered the infant with a permanent and substantial motor impairment or with a developmental disability as that term is defined by section 1.03 of the mental hygiene law, or both. This definition shall apply to live births only.

S 4. This act shall take effect on the forty-fifth day after it shall have become a law.