

# STATE OF NEW YORK

8591

## IN SENATE

March 18, 2022

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to qualifying health care costs and case management services under the New York state medical indemnity fund; and to amend chapter 517 of the laws of 2016, amending the public health law relating to payments from the New York state medical indemnity fund, in relation to the effectiveness thereof

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

1 Section 1. Section 2999-h of the public health law, as added by  
2 section 52 of part H of chapter 59 of the laws of 2011, subdivision 1 as  
3 amended by chapter 517 of the laws of 2016, subdivision 3 as amended by  
4 chapter 4 of the laws of 2017 and subdivision 4 as amended by section 1  
5 of part K of chapter 57 of the laws of 2019, is amended to read as  
6 follows:

7 § 2999-h. Definitions. As used in this title, unless the context or  
8 subject matter requires otherwise:

9 1. "Activities of daily living" mean basic self-care tasks such as  
10 dressing and undressing, self-feeding, bowel and bladder management,  
11 ambulation with or without the use of an assistive device, communi-  
12 cation, functional transfers from one place to another, and personal  
13 hygiene and grooming.

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

22 [~~2-~~] 3. "Custodial care" means non-medical services provided by home  
23 health aides, nurse aides, personal care aides, and other qualified  
24 health care providers to assist enrollees with activities of daily

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

LBD14632-03-2

1 living, instrumental activities of daily living, and daily or ongoing  
2 medical care and support.

3 4. "Fund" means the New York state medical indemnity fund.

4 ~~[3-]~~ 5. "Instrumental activities of daily living" mean those functions  
5 not necessary for fundamental functioning but necessary for an individ-  
6 ual to be able to live independently in the community such as taking  
7 medications as prescribed, performing housekeeping tasks, managing  
8 money, using the telephone or other form of communication, shopping for  
9 groceries and clothing, and managing transportation within the communi-  
10 ty.

11 6. "Qualifying health care costs" means the future costs for medical,  
12 hospital, surgical, nursing, dental, rehabilitation services, habilita-  
13 tion services, ~~[respite, custodial, durable medical equipment, home~~  
14 ~~modifications, assistive technology, vehicle modifications,]~~ and custo-  
15 dial care; behavioral and mental health care; respite care, subject to a  
16 maximum of one thousand eighty hours per year unless prior approval has  
17 been obtained for additional respite care; durable medical equipment;  
18 environmental home modifications (emods), assistive technology, and  
19 vehicle modifications; prescription and over the counter medications  
20 when prescribed by an authorized health care provider licensed or certi-  
21 fied under title eight of the education law and as otherwise defined in  
22 regulation; transportation for purposes of health care related appoint-  
23 ments~~[, prescription and non-prescription medications, and other health~~  
24 ~~care costs actually incurred for services rendered to and supplies~~  
25 ~~utilized by qualified plaintiffs, which are necessary to meet their~~  
26 ~~health care needs, as determined by their treating physicians, physician~~  
27 ~~assistants, or nurse practitioners and as otherwise defined by the~~  
28 ~~commissioner in regulation]~~ in accordance with regulations; copayments  
29 and deductibles for services, items, equipment or medication paid for by  
30 commercial insurance; and any other health care costs actually incurred  
31 for services rendered to and supplies utilized by a qualified plaintiff  
32 that his or her physician, physician assistant, or nurse practitioner  
33 has stated in writing on his or her letterhead, or on the supervising or  
34 collaborating physician's letterhead, if applicable, is necessary to  
35 meet the qualified plaintiff's health care needs. The statement of  
36 necessity may be based on the assessment of a health care provider  
37 licensed or certified under title eight of the education law and as  
38 otherwise defined in regulation. The fund administrator may make cover-  
39 age of ongoing therapeutic services subject to the receipt of periodic  
40 treatment plans and progress reports. Health care providers as used in  
41 this section shall mean health care providers licensed or certified  
42 under title eight of the education law and as otherwise defined in regu-  
43 lation.

44 ~~[4-]~~ 7. "Qualified plaintiff" means every plaintiff or claimant who  
45 (i) has been found by a jury or court to have sustained a birth-related  
46 neurological injury as the result of medical malpractice, or (ii) has  
47 sustained a birth-related neurological injury as the result of alleged  
48 medical malpractice, and has settled his or her lawsuit or claim there-  
49 for; and (iii) has been ordered to be enrolled in the fund by a court in  
50 New York state.

51 § 2. Section 2999-j of the public health law is amended by adding a  
52 new subdivision 4-a to read as follows:

53 4-a. Qualifying health care costs actually incurred for services  
54 rendered to and supplies utilized by qualified plaintiffs in the home or  
55 in a residential or other facility shall be paid from the fund. The  
56 commissioner shall promulgate regulations regarding billing procedures

1 and reimbursement calculation methodology for qualifying health care  
2 costs. The reimbursement calculation methodology shall adhere to subdi-  
3 vision four of this section and shall consider the schedule of qualify-  
4 ing health care services rendered to qualified plaintiffs.

5 § 3. The public health law is amended by adding two new sections  
6 2999-k and 2999-l to read as follows:

7 § 2999-k. Case management. 1. As used in this article: "case manage-  
8 ment" means functions, including but not limited to:

9 (a) conducting a new enrollee orientation session by telephone or  
10 video technology within ten days of the enrollee being accepted into the  
11 fund, for the enrollee and the enrollee's parent, guardian, or legal  
12 representative, which shall include review of the following and time to  
13 answer questions posed by the enrollee or the enrollee's parent, guardi-  
14 an, or legal representative:

15 (i) the New York State Medical Indemnity Fund Enrollee Handbook;

16 (ii) case management services available to the enrollee and the  
17 enrollee's parent, guardian, or legal representative;

18 (iii) qualifying health care costs actually incurred for services  
19 rendered to and supplies utilized by enrollees in the home or in a resi-  
20 dential facility;

21 (iv) qualifying health care costs actually incurred for services  
22 rendered to and supplies utilized by enrollees in the home or in a resi-  
23 dential facility that require prior approval or documentation of medical  
24 necessity and recertification;

25 (v) the claims reimbursement and appeals processes, including how and  
26 with whom to file an appeal;

27 (vi) required forms that must be completed, how to request the forms,  
28 and where forms are located online if applicable; and

29 (vii) how to contact the fund administrator and the department with  
30 questions or concerns;

31 (b) conducting an initial assessment and periodic reassessments of the  
32 enrollee's medical needs;

33 (c) evaluating the enrollee's strengths, informal support system and  
34 environmental factors relevant to his/her care;

35 (d) reviewing information provided by the enrollee, the enrollee's  
36 informal support system, and current providers (including any school  
37 related or habilitation services) regarding the services presently being  
38 provided to the enrollee and any existing gaps in the services being  
39 provided to the enrollee;

40 (e) establishing a comprehensive, written case management plan to  
41 assist the enrollee or the enrollee's caregiver to manage the delivery  
42 of all qualifying health care services needed by the enrollee;

43 (f) assisting an enrollee or the enrollee's caregiver to obtain  
44 services set forth in the case management plan for the enrollee through  
45 referral to agencies or persons qualified to provide those services;

46 (g) assisting the enrollee with any forms necessary for the receipt of  
47 or payment for services;

48 (h) assisting with crisis intervention in the event that the enrollee  
49 has emergency service needs;

50 (i) developing and maintaining a list of alternative provider sources  
51 that may be available to the enrollee in the event of service  
52 disruption, and making that list available upon the request of the  
53 enrollee or the enrollee's caregiver; and

54 (j) monitoring the services provided under the case management plan  
55 by:

1 (i) verifying that the services identified in the case management plan  
2 are being received by the enrollee in the amount and frequency specified  
3 in the case plan; and

4 (ii) documenting the case record regarding the enrollee's medical  
5 condition and progress made.

6 2. If the enrollee already has a case manager in another health  
7 related program, the fund administrator's case manager shall coordinate  
8 the enrollee's care in conjunction with the other case manager.

9 3. A case manager shall have significant experience or educational  
10 training in health or social services, preferably including work experi-  
11 ence or a practicum that involved the performance of assessments and the  
12 development of case management plans. Voluntary or part-time experience  
13 that can be verified will be accepted on a pro rata basis.

14 4. An enrollee or person acting on an enrollee's behalf can request a  
15 change in case manager at any time by submitting a written request for  
16 reassignment on a form provided by the fund administrator. Reassignments  
17 will occur as promptly as possible based on case manager availability  
18 and existing caseloads.

19 5. The enrollee or the enrollee's parent, guardian or legal represen-  
20 tative is responsible for participating in an initial case management  
21 conference and subsequent, periodic case management conferences on a  
22 schedule determined by the needs of the enrollee. The repeated failure  
23 of the responsible individual to participate in necessary case manage-  
24 ment conferences may result in the fund administrator not processing any  
25 claims or requests until compliance with this requirement occurs.

26 § 2999-1. Explanation of benefits forms relating to claims for quali-  
27 fying health care costs under the fund. 1. The fund administrator is  
28 required to provide the qualified plaintiff with an explanation of bene-  
29 fits form in response to the filing of any claim for qualifying health  
30 care costs.

31 2. The explanation of benefits form must include at least the follow-  
32 ing:

33 (a) the name of the provider of service, the admission or financial  
34 control number, if applicable;

35 (b) the date of service;

36 (c) an identification of the service for which the claim is made;

37 (d) the provider's charge or rate;

38 (e) the amount or percentage paid by the primary third-party payor and  
39 the amount payable under the fund;

40 (f) a specific explanation of any denial, reduction, or other reason,  
41 including any other third-party payor coverage, for not providing full  
42 reimbursement for the amount claimed;

43 (g) a telephone number, digital information, and address where the  
44 qualified plaintiff or their parent, guardian, or legal representative  
45 may obtain clarification of the explanation of benefits; and

46 (h) a description of the time limit, place and manner in which an  
47 appeal of a denial of benefits must be brought under the fund.

48 3. The provisions of this section requiring an explanation of benefits  
49 form for qualifying health care cost claims shall be provided by a writ-  
50 ten summary of the information prescribed by paragraph (a) of subdivi-  
51 sion two of this section or by making such information available elec-  
52 tronically on the member portal of the administrator's website, provided  
53 that the member consents to receiving the information electronically.  
54 Members may change how they elect to receive the explanation of bene-  
55 fits.

1 4. Explanation of benefits forms for qualifying health care costs that  
2 result from pharmaceutical claims shall be provided on a quarterly  
3 basis.

4 § 4. Section 5 of chapter 517 of the laws of 2016, amending the public  
5 health law relating to payments from the New York state medical indem-  
6 nity fund, as amended by section 8 of part S of chapter 57 of the laws  
7 of 2021, is amended to read as follows:

8 § 5. This act shall take effect on the forty-fifth day after it shall  
9 have become a law, provided that the amendments to subdivision 4 of  
10 section 2999-j of the public health law made by section two of this act  
11 shall take effect on June 30, 2017 [~~and shall expire and be deemed~~  
12 ~~repealed December 31, 2022~~].

13 § 5. This act shall take effect on the thirtieth day after it shall  
14 have become a law. Effective immediately, the addition, amendment and/or  
15 repeal of any rule or regulation necessary for the implementation of  
16 this act on its effective date are authorized to be made and completed  
17 on or before such effective date.