STATE OF NEW YORK

6442--C

2021-2022 Regular Sessions

IN ASSEMBLY

March 17, 2021

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to qualifying health care costs 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:

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

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

1. **"Activities of daily living" means basic personal everyday activities, including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.**

2. "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

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

LBD10436-05-2

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.

[~~2.~~] 3. "Fund" means the New York state medical indemnity fund.

[~~3.~~] 4. "Instrumental activities of daily living" means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.

5. "Qualifying health care costs" means the future costs for medical, hospital, surgical, nursing, dental, rehabilitation services, habilitation services, [~~respite, custodial, durable medical equipment, home modifications, assistive technology, vehicle modifications,~~] therapeutic services, and custodial care; behavioral and mental health care; respite care; durable medical equipment; environmental home modifications (emods), assistive technology, and vehicle modifications; prescription and over the counter medications; transportation for purposes of health care related appointments[~~, prescription and non-prescription medications,~~] and other health care costs actually incurred for services rendered to and supplies utilized by qualified plaintiffs, which are necessary to meet their health care needs[~~, as determined by their treating physicians, physician assistants, or nurse practitioners~~] and as otherwise defined by the commissioner in regulation; copayments and deductibles for services, items, equipment or medication paid for by commercial insurance; and any other health care costs actually incurred for services rendered to and supplies utilized by a qualified plaintiff that their health care provider has stated in writing is necessary to meet the qualified plaintiff's health care needs. The statement of necessity may be based on the assessment of a health care provider licensed or certified under title eight of the education law and as otherwise defined in regulation. Health care providers as used in this section shall mean health care providers licensed or certified under title eight of the education law and as otherwise may be defined in regulation. Qualifying health care costs shall be covered regardless of the setting where these services are provided.

[~~4.~~] 6. "Qualified plaintiff" means every plaintiff or claimant who (i) has been found by a jury or court to have sustained a birth-related neurological injury as the result of medical malpractice, or (ii) has sustained a birth-related neurological injury as the result of alleged medical malpractice, and has settled his or her lawsuit or claim therefor; and (iii) has been ordered to be enrolled in the fund by a court in New York state.

§ 2. The public health law is amended by adding a new section 2999-k to read as follows:

§ 2999-k. Explanation of benefits forms relating to claims for qualifying health care costs under the fund. The fund administrator shall provide qualified plaintiffs with an explanation of benefits form which shall include an identification of the service for which the claim was made, an explanation of any denial or reduction in reimbursement for the amount claimed, and information on the process to appeal a denial of benefits.

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

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

§ 4. This act shall take effect immediately, provided however that sections one and two of this act shall take effect on the thirtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.