STATE OF NEW YORK

4131

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

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

AN ACT to amend the public health law, in relation to definitions of certain terms relating to the New York state medical indemnity fund; to repeal section 2999-k of the public health law, relating to claims for 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 amended by a chapter of the laws of 2022 amending the public health law relating to qualifying health care costs under the New York state medical indemnity fund and amending chapter 517 of the laws of 2016 amending the public health law relating to payments from the New York state medical indemnity fund relating to the effectiveness thereof, as proposed in legislative bills numbers S. 8591-A and A. 6442-C, 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 substantial motor impairment or with a developmental disability as that

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

LBD04302-01-3

term is defined by section 1.03 of the mental hygiene law, or both. This definition shall apply to live births only.

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

[~~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.~~] 3. "Qualifying health care costs" means the future [~~costs for~~] medical, hospital, surgical, nursing, dental, rehabilitation [~~services~~], habilitation [~~services~~], [~~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;~~] respite, custodial, durable medical equipment, home modifications, assistive technology, vehicle modifications, 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~~].

[~~6.~~] 4. "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. Section 2999-k of the public health law, as added by a chapter of the laws of 2022 amending the public health law relating to qualifying health care costs under the New York state medical indemnity fund and amending chapter 517 of the laws of 2016 amending the public health law relating to payments from the New York state medical indemnity fund relating to the effectiveness thereof, as proposed in legislative bills numbers S. 8591-A and A. 6442-C, is REPEALED.

§ 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 a chapter of the laws of 2022 amending the public health law relating to qualifying health care costs under the New York state medical indemnity fund and amending chapter 517 of the laws of 2016 amending the public health law relating to payments from the New York state medical indemnity fund relating to the effectiveness thereof,

as proposed in legislative bills numbers S. 8591-A and A. 6442-C, 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, 2025**.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the public health law relating to qualifying health care costs under the New York state medical indemnity fund and amending chapter 517 of the laws of 2016 amending the public health law relating to payments from the New York state medical indemnity fund relating to the effectiveness thereof, as proposed in legislative bills numbers S. 8591-A and A. 6442-C, takes effect.