STATE OF NEW YORK

9566

IN ASSEMBLY

March 20, 2024

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

AN ACT to amend the public health law, in relation to providing medical indemnity fund reimbursement for care provided by a family member certified as a complex care assistant

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 chapter 112 of the laws of 2023, 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 term is defined by section 1.03 of the mental hygiene law, or both. This definition shall apply to live births only.

[~~2.~~] **3. "Complex care assistant" means a family member who is certified by the department to care for a qualified plaintiff under section twenty-nine hundred ninety-nine-k of this title.**

4. "Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, or any other individual related by blood, and any other individual with a close association to a qualified plaintiff that is the equivalent of a family relationship.

5. "Fund" means the New York state medical indemnity fund.

[~~3.~~] **6.** "Qualifying health care costs" means the future medical, hospital, surgical, nursing, dental, rehabilitation, habilitation, respite, custodial, durable medical equipment, home modifications,

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

LBD14703-01-4

assistive technology, vehicle modifications, transportation for purposes of health care related appointments, prescription and non-prescription medications, **assistance with activities of daily living,** 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.

[~~4.~~] **7.** "Qualified plaintiff" means every plaintiff or claimant who**:** **(a)** (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)~~] **(b)** 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. Certification of complex care assistants. 1. A complex care assistant certified pursuant to this section shall be authorized to provide care for a family member who is a qualified plaintiff, and to receive reimbursement for such care as provided under section twenty-nine hundred ninety-nine-j of this title.

2. The commissioner shall establish a course that may be taken by family members of a qualified plaintiff for certification as complex care assistants. Such course shall include, but not be limited to, instruction in the following tasks required to care for a qualified plaintiff:

(a) medication administration;

(b) airway clearance therapies;

(c) tracheostomy care;

(d) intravenous line care;

(e) ventilator care;

(f) enteral care;

(g) assistance with activities of daily living; and

(h) any other tasks as determined by the commissioner.

3. The course under subdivision one of this section shall conclude in an in-person exam, testing proficiency and competence of exam-takers in performing the tasks required to care for a qualified plaintiff under subdivision two of this section. Individuals who receive a passing grade in such exam, as determined by the commissioner, shall be certified as a complex care assistant.

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

4-a. The commissioner shall develop a method by which qualifying health care costs shall be calculated for services provided by a complex care assistant.

§ 4. This act shall take effect on the ninetieth 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.