STATE OF NEW YORK

1053

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sen. COONEY -- 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 neurological injuries

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

Section 1. Section 2999-g 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:

§ 2999-g. Purpose of this title. Creation of the New York state medical indemnity fund. There is hereby created the New York state medical indemnity fund (the "fund"). The purpose of the fund is to provide a funding source for future health care costs associated with [~~birth related~~] neurological injuries, in order to reduce premium costs for medical malpractice insurance coverage.

§ 2. Section 2999-h of the public health law, as amended by chapter 807 of the laws of 2022, 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.

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

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2-a. "Neurological injury" means an injury to the brain or spinal cord of a person occurring in the course of the provision of medical services, that rendered the person with a permanent and substantial motor impairment or with a disability that: (i) results in similar impairment of general intellectual functioning or adaptive behavior to that of intellectually disabled persons or (ii) requires treatment and services similar to those required for such person; and (iii) has continued or can be expected to continue indefinitely; and (iv) constitutes a substantial handicap to such person's ability to function normally in society.

3. "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. "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; transportation for purposes of health care related appointments 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 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. "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 **or a 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.

§ 3. Subdivision 6 of section 2999-j of the public health law, as amended by section 3 of part K of chapter 57 of the laws of 2019, is amended to read as follows:

6. (a) Every settlement agreement for claims arising out of a plaintiff's or claimant's birth related neurological injury **or a plaintiff's or claimant's neurological injury** subject to this title, and that provides for the payment of future medical expenses for the plaintiff or claimant, shall provide that all payments for future medical expenses shall be paid in accordance with this title in lieu of that

portion of the settlement agreement that provides for payment of such expenses. The plaintiff's or claimant's future medical expenses shall be paid in accordance with this title. When such a settlement agreement does not so provide, the court shall direct the modification of the agreement to include such term as a condition of court approval.

(b) In any case where the jury or court has made an award for future medical expenses arising out of a birth related neurological injury **or a neurological injury**, any party to such action or person authorized to act on behalf of such party may make application to the court that the judgment reflect that, in lieu of that portion of the award that provides for payment of such expenses, the future medical expenses of the plaintiff shall be paid out of the fund in accordance with this title. Upon a finding by the court that the applicant has made a prima facie showing that the plaintiff is a qualified plaintiff, the court shall ensure that the judgment so provides.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the provisions of section two of this act shall take effect on the same date and in the same manner as chapter 807 of the laws of 2022, takes effect.