

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:

1 Section 1. Section 2999-h of the public health law, as amended by
2 chapter 112 of the laws of 2023, is amended to read as follows:

3 § 2999-h. Definitions. As used in this title, unless the context or
4 subject matter requires otherwise:

5 1. "Activities of daily living" means basic personal everyday activ-
6 ities, including, but not limited to, tasks such as eating, toileting,
7 grooming, dressing, bathing, and transferring.

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

16 ~~[2-]~~ 3. "Complex care assistant" means a family member who is certi-
17 fied by the department to care for a qualified plaintiff under section
18 twenty-nine hundred ninety-nine-k of this title.

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

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

25 ~~[3-]~~ 6. "Qualifying health care costs" means the future medical,
26 hospital, surgical, nursing, dental, rehabilitation, habilitation,
27 respite, custodial, durable medical equipment, home modifications,

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

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1 assistive technology, vehicle modifications, transportation for purposes
2 of health care related appointments, prescription and non-prescription
3 medications, assistance with activities of daily living, and other
4 health care costs actually incurred for services rendered to and
5 supplies utilized by qualified plaintiffs, which are necessary to meet
6 their health care needs, as determined by their treating physicians,
7 physician assistants, or nurse practitioners and as otherwise defined by
8 the commissioner in regulation.

9 ~~[4-]~~ 7. "Qualified plaintiff" means every plaintiff or claimant who:
10 (a) (i) has been found by a jury or court to have sustained a birth-re-
11 lated neurological injury as the result of medical malpractice[7]; or
12 (ii) has sustained a birth-related neurological injury as the result of
13 alleged medical malpractice, and has settled his or her lawsuit or claim
14 therefor; and [~~(iii)~~] (b) has been ordered to be enrolled in the fund by
15 a court in New York state.

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

18 § 2999-k. Certification of complex care assistants. 1. A complex care
19 assistant certified pursuant to this section shall be authorized to
20 provide care for a family member who is a qualified plaintiff, and to
21 receive reimbursement for such care as provided under section twenty-
22 nine hundred ninety-nine-j of this title.

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

28 (a) medication administration;

29 (b) airway clearance therapies;

30 (c) tracheostomy care;

31 (d) intravenous line care;

32 (e) ventilator care;

33 (f) enteral care;

34 (g) assistance with activities of daily living; and

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

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

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

44 4-a. The commissioner shall develop a method by which qualifying
45 health care costs shall be calculated for services provided by a complex
46 care assistant.

47 § 4. This act shall take effect on the ninetieth day after it shall
48 have become a law. Effective immediately, the addition, amendment and/or
49 repeal of any rule or regulation necessary for the implementation of
50 this act on its effective date are authorized to be made and completed
51 on or before such effective date.