A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the public health law, in relation to reimbursement from the medical indemnity fund (Part );

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

1 PART __

Section 1. Subdivision 3 of section 2999-h of the public health law, as amended by chapter 4 of the laws of 2017, is amended to read as follows:

3. "Qualifying health care costs" means the future medical, hospital, surgical, nursing, dental, rehabilitation, habilitation, respite, custodial care provided in a residential health care facility, 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.

§ 2. Subdivisions 2 and 4 of section 2999-j of the public health law, subdivision 2 as amended by section 3 of part K of chapter 57 of the laws of 2019 and subdivision 4 as amended by chapter 517 of the laws of 2016, are amended to read as follows:
2. (a) The provision of qualifying health care costs to qualified plaintiffs shall not be subject to prior authorization, except as described by the commissioner in regulation; provided, however:

[(a)] (i) such regulation shall not prevent qualified plaintiffs from receiving care or assistance that would, at a minimum, be authorized under the medicaid program;

[(b)] (ii) if any prior authorization is required by such regulation, the regulation shall require that requests for prior authorization be processed within a reasonably prompt period of time and shall identify a process for prompt administrative review of any denial of a request for prior authorization; and

[(c)] (iii) such regulations shall not prohibit qualifying health care costs on the grounds that the qualifying health care cost may incidentally benefit other members of the household, provided that whether the qualifying health care cost primarily benefits the patient may be considered.

(b) Under no circumstances shall a parent, or a guardian residing with the enrollee, who is legally required to provide care and support to a qualified plaintiff be approved as a provider of qualifying health care costs reimbursable by the fund.

4. The amount of qualifying health care costs to be paid from the fund shall be calculated on the basis of one hundred percent of the usual and customary cost. For the purposes of this section, "usual and customary costs" shall mean the eightieth percentile of all charges for the particular health care service performed by a provider in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent of financial services. If no such rates are
available qualifying health care costs shall be calculated on the basis of no less than one hundred thirty percent of Medicaid or one hundred percent of Medicare rates of reimbursement, whichever is higher. If no such rate exists, costs shall be reimbursed as defined by the commissioner in regulation.

§ 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2021; provided, however, that the amendments to subdivision 4 of section 2999-j of the public health law made by section two of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.