

DRAFT LBDC

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 reimburse-
ment from the medical indemnity fund (Part);

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

1 PART ____

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

5 3. "Qualifying health care costs" means the future medical, hospital,
6 surgical, nursing, dental, rehabilitation, habilitation, respite, custo-
7 dial care provided in a residential health care facility, durable
8 medical equipment, home modifications, assistive technology, vehicle
9 modifications, transportation for purposes of health care related
10 appointments, prescription and non-prescription medications, and other
11 health care costs actually incurred for services rendered to and
12 supplies utilized by qualified plaintiffs, which are necessary to meet
13 their health care needs, as determined by their treating physicians,
14 physician assistants, or nurse practitioners and as otherwise defined by
15 the commissioner in regulation.

16 § 2. Subdivisions 2 and 4 of section 2999-j of the public health law,
17 subdivision 2 as amended by section 3 of part K of chapter 57 of the
18 laws of 2019 and subdivision 4 as amended by chapter 517 of the laws of
19 2016, are amended to read as follows:

1 2. (a) The provision of qualifying health care costs to qualified
2 plaintiffs shall not be subject to prior authorization, except as
3 described by the commissioner in regulation; provided, however:

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

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

12 [(c)] (iii) such regulations shall not prohibit qualifying health care
13 costs on the grounds that the qualifying health care cost may inci-
14 dentally benefit other members of the household, provided that whether
15 the qualifying health care cost primarily benefits the patient may be
16 considered.

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

21 4. The amount of qualifying health care costs to be paid from the fund
22 shall be calculated on the basis of one hundred percent of the usual and
23 customary cost. For the purposes of this section, "usual and customary
24 costs" shall mean the eightieth percentile of all charges for the
25 particular health care service performed by a provider in the same or
26 similar specialty and provided in the same geographical area as reported
27 in a benchmarking database maintained by a nonprofit organization speci-
28 fied by the superintendent of financial services. If no such rates are

1 available qualifying health care costs shall be calculated on the basis
2 of no less than one hundred thirty percent of Medicaid or one hundred
3 percent of Medicare rates of reimbursement, whichever is higher. If no
4 such rate exists, costs shall be reimbursed as defined by the commis-
5 sioner in regulation.

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