

TO: All Local District Commissioners, Health Home Care Management Agencies, All Office for People With Developmental Disabilities (OPWDD) Offices and OPWDD Certified Agencies

FROM: Douglas Fish, MD, Director, Division of Medical and Dental Directors

SUBJECT: NYS Medical Indemnity Fund, the 1915 (c) Home and Community Based Services Waivers, Department of Health (DOH) Children's Waiver and OPWDD Comprehensive Waiver

EFFECTIVE DATE: Immediately

CONTACT PERSON: MIF@health.ny.gov

The purpose of this GIS is to clarify and inform local districts, Health Home Care Management agencies, care coordinators, OPWDD Offices, and Certified Agencies that an individual enrolled in the DOH Children's Waiver or OPWDD Comprehensive Waiver can also be enrolled in the Medical Indemnity Fund at the same time. This GIS replaces the GIS 15 MA/015: NYS Medical Indemnity Fund and the Care at Home III, IV and VI Waivers.

The Medical Indemnity Fund ("Fund") was established by Part H of Chapter 59 of the Laws of 2011 which added Title 4 to Article 29-D of the Public Health Law. The Fund is designed to pay all future costs necessary to meet the health care needs of plaintiffs in medical malpractice actions who have received either court-approved settlements or judgments deeming the plaintiffs' neurological impairments to be birth-related. These plaintiffs are called "qualified plaintiffs." Please note that while individuals qualify for the MIF based on birth-related neurological impairments, an individual will remain in the MIF for the duration of their lifetime. The New York State Department of Health (DOH) is designated by law as the administrator of the Fund. Regulations governing the proper administration of the Fund are the responsibility of the Commissioner of Health. The regulations are set forth in 10 NYCRR Subpart 69-10. The Fund was statutorily required to be operational by October 1, 2011. DOH has created a Fund website which can be accessed at

https://www.health.ny.gov/regulations/medical_indemnity_fund/index.htm

The Fund will cover or reimburse the cost of qualifying health care services, supplies, equipment, and medications that the Fund enrollee's physician, physician assistant, or nurse practitioner has determined are necessary to meet the Fund enrollee's health care needs. In general, such costs include:

- Medical treatment
- Hospital-based care, including surgical care
- Nursing care
- Dental care

- Prescription and non-prescription medication
- Durable Medical Equipment
- Assistive Technology
- Home and Vehicle Modifications
- Rehabilitation
- Custodial and Respite care
- Other qualifying health care costs related to services and supplies utilized by Fund enrollees.

When a "qualified plaintiff" enrolls in the Fund, the family will receive an enrollment package that includes an identification card to present to health care providers. The following payers must be utilized for each claim, in order of priority: Private Insurance, the Fund, Medicare, and final, Medicaid, as the payor of last resort.

DOH has contracted with Public Consulting Group (PCG) to administer the day-to-day operations of the Fund. PCG has a toll-free customer service phone line for the Fund. PCG can be reached at 855-696-4333. At the time of enrollment into the Fund, a Fund case manager is assigned to each qualified participant. The Health Home care manager (or Care Coordination Organization health home care manager) and the Fund case manager must work closely together to coordinate care and ensure continuity of care, and avoid duplication of services, for all qualified participants.

For participants enrolled in Medicaid, monthly the NYS Department of Health will enter the Medical Indemnity Fund carrier code "MIF" into the eMedNY Third Party subsystem. This will ensure that Medicaid is the payer of last resort.

MIF enrollees do not need to be Medicaid participants to qualify for enrollment in the Fund and may be dually enrolled.

The NYS Department of Health has determined that a child can remain in the DOH Children's Waiver or OPWDD Comprehensive Waiver programs at the same time as enrollment in the Fund, but the Fund is the primary payer for Fund-covered services.

Please note: Health Home care management services are not covered by the Fund and will continue to be billed directly to Medicaid.

Questions can be directed to DOH at MIF@health.ny.gov.