



# **MEDICAL MALPRACTICE REFORM**

**ENACTED STATE BUDGET  
2011-2012**

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# COMPONENTS OF ENACTED LEGISLATION

- Medical Indemnity Fund (MIF) for birth related neurologically impaired infants that have received a settlement or jury award
- Hospital Quality Initiative with an obstetrical safety workgroup
- Hospital Quality contribution for the MIF and the initiative
- County incentives for Medicaid lien recovery
- Mandatory court settlement conferences for malpractice cases



# MEDICAL INDEMNITY FUND

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# MEDICAL INDEMNITY FUND

## Eligibility

- Children who have been found by a jury or court to have sustained a birth related neurological injury or have settled a claim or lawsuit based on alleged medical malpractice
  - Birth-related neurological injury- An injury to the brain or spinal cord of a live infant caused by either (1) the deprivation of oxygen or mechanical injury in the course of labor, delivery, or resuscitation or by (2) other medical services provided or not provided during the delivery admission that rendered the infant with a permanent and substantial motor impairment or with a developmental disability as defined by section 1.03 of the Mental Hygiene Law, or both.
- Application can be made by child's parent or defendant
- Applies to all cases settled or awarded after April 1,2011.

# MEDICAL INDEMNITY – SETTLEMENTS AND AWARDS

## Settlements – Section 2999-j. 6.(a)

- All settlement agreements for claims based on birth related neurological injury subject to this title and that provides for the payment of future medical expenses shall provide that in the event that the administrator of the fund determines that the plaintiff or claimant is a qualified plaintiff, 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 expense.
- The plaintiff's or claimant's future medical expenses shall be paid in accordance with this title.
- When such settlement agreement does not provide, the court shall direct the modification of the agreement to include such terms as a condition of court approval.

# MEDICAL INDEMNITY – SETTLEMENTS AND AWARDS

## Awards – Section 2999-j. 6.(b)

- “In any case where the jury or the court has made award for future medical expenses based on a birth related 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 and upon determination by the fund administrator that the plaintiff is a qualified plaintiff the future medical expenses of the plaintiff shall be paid out of the fund in accordance with this title.
- Upon 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.”

# MEDICAL INDEMNITY FUND

- The Fund will be administered by the Department of Financial Services (DFS) and will be operative on October 1, 2011. Regulations to be developed by DOH and DFS with feedback from consumer advisory group.
- It will pay for future “qualifying health care costs” including :
  - Expenses for medical, hospital, surgical, nursing, dental, rehabilitation, and custodial care,
  - durable medical equipment,
  - home modifications, assistive technology, vehicle modifications,
  - prescription and non-prescription medications and
  - other health care costs for services rendered to and supplies utilized by qualified plaintiffs that are medically necessary as determined by their treating physicians, physician assistants or nurse practitioners
- Qualifying health care costs are those not covered by a collateral source other than Medicare or Medicaid.

# MEDICAL INDEMNITY FUND

- Qualifying Health Care Cost reimbursement
  - Private physician services: Usual and customary rate
  - All other services : Medicaid rate of payment
  - Services with no Medicaid rate: established by Commissioner in regulation
  - Some costs will require prior authorization
  - Providers must accept an assignment for payment of a claim from the MIF for an eligible child



# MEDICAL INDEMNITY FUND

- Monies of the Fund will be held by the Commissioner of Taxation and Finance and kept separate from all other accounts and cannot be co-mingled.
- Reimbursement from the Fund will be released only upon signed certification by the Superintendent of Financial Services .
- Funding of \$30 m for fiscal year 2011-2012.
- Annual actuarial calculation; if liabilities are 80% or more of fund assets, enrollment will be suspended until new contributions are received.
  - Notification is required when Fund enrollment is suspended or reinstated

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# HOSPITAL QUALITY INITIATIVE

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# HOSPITAL QUALITY INITIATIVE

- Will oversee general dissemination of initiatives, guidance and best practices to hospitals, including;
  - Building cultures of patient safety
  - Initiating evidence based care in targeted areas
- Comprised of stakeholders chosen by the Commissioner
  - Medical, hospital, academic and other experts
  - Will include academic evaluation component to assist with development of metrics and evaluation

# HOSPITAL QUALITY INITIATIVE

- Initiative will include an obstetrical patient safety workgroup
- Charged with improving outcomes and quality.  
Possible initiatives include:
  - Current best practices and exploring the use of “virtual grand rounds” to disseminate the results;
  - Review medical malpractice claims for information to inform best practice;
  - Use regional perinatal center network to assist in keeping smaller hospitals informed;
  - Make recommendations to Commissioner regarding best practice standards and new programs
- Workgroup’s efforts will include an academic evaluation component focused on outcome metrics

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# HOSPITAL QUALITY CONTRIBUTION

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# HOSPITAL QUALITY CONTRIBUTION

- Beginning July 2011, a quality contribution equal to 1.6% of inpatient obstetrical revenue will be collected and deposited in the HCRA resources account.
  - If this percentage does not achieve the required amount (see below), adjustments to the percentage can be made.
- For the State Fiscal Year beginning April 1, 2011, the Hospital Quality Contribution shall equal \$30m.
- Annually thereafter, the requisite amount will be increased by the ten year rolling medical CPI.

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# MEDICAL MALPRACTICE SETTLEMENT CONFERENCES

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# SETTLEMENT CONFERENCES

- The Court will hold mandatory settlement conferences for dental, podiatric and medical malpractice actions within:
  - 45 days from the filing of a note of issue and certificate of readiness ; or
  - 45 days from a denial of motion if a party moves to vacate
- Persons authorized to act on behalf of a party to the case will be permitted to attend a settlement conference; the only attorneys permitted to attend will be those familiar with and authorized to settle, the case.
- The court may also require other interested parties in the case to attend
- Chief Judge to adopt rules for implementation.
- Effective 90 days from April 1, 2011



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# IMPROVED MEDICAID LIEN COLLECTION

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# MEDICAID LIEN COLLECTION

- Commissioner authorized to approve a social services demonstration program to improve collections
  - Based on evaluated results and certification by Budget, Commissioner may share 10% of savings with social service districts
- Notice of the commencement of a personal injury act by a Medicaid recipient shall be sent to the local social services district in which the recipient resides or the DOH within sixty days of completion of service
  - Proof of sending notice will be filed with Court.