

CHILD SAFETY BLOG

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New York creates fund for babies with brain damage from malpractice errors

New York state has created a new fund to pay medical expenses for infants who are neurologically damaged as a result of malpractice and other medical mistakes, but opponents say it means families will have to fight with state authorities to obtain treatments as their children age.

The fund, which is due to go into effect on Oct. 1, 2011, allows medical costs to be provided on an annual basis to injured parties. Parents or guardians can still pursue medical malpractice actions on the basis of emotional distress and other losses.

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Between 150 and 200 babies are expected to qualify annually for the new fund, according to Jason Helgerson, Gov. Andrew Cuomo's chief Medicaid reform adviser. Participation in the fund is mandatory for those seeking either Medicaid recompensation or filing medical malpractice suits.

Helgerson says the fund will offer a more accurate means of providing care for injured infants because it isn't subject to inaccurate estimates made by judges and juries trying to arrive at an accurate figure for health-care costs under the current malpractice award system.

But opponents of the fund maintain that the system was championed by health-care providers and will subject the families of neurologically damaged infants to on-going battles with the state for treatments as their children age.

Under the new statute, the fund describes "birth-related neurological injuries" as "an injury to the brain or spinal cord of a live infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation or by other medical services provided or not provided during delivery admission that rendered the infant with a permanent and substantial motor impairment or with a developmental disability."

Medical care will be decided on a case-by-case basis. In the event the fund is reduced to 20 percent or less of its annual size, the law contains a default stipulation allowing suits to be brought for medical expenses.

The establishment of the fund was included in a host of recommendations by a Medicaid Redesign Team (MRT) appointed by Gov. Cuomo to halt escalating Medicaid costs. Another recommendation from the task force called for capping noneconomic damages in medical malpractice cases at \$250,000. That proposal was fiercely opposed and eventually scrapped.

Source: [New York Law Journal](#)

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