

Paragraph (16) of subdivision (a) of section 355.9 of Title 12 NYCRR is hereby amended to read as follows:

(16) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider. Serious health condition also means a COVID-19 diagnosis by a health care provider.

(i) As used in this Title, continuing treatment or continuing supervision by a health care provider means one or more of the following:

(a) A period of more than three consecutive, full days during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to illness, injury, impairment, or physical or mental conditions, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- (1) Treatment two or more times by a health care provider; or
- (2) Treatment on at least one occasion by a health care provider, which results in a regimen of continuing treatment under the supervision of the health care provider.

(b) Any period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to a chronic serious health condition. A chronic serious health condition is one which:

- (1) Requires periodic visits for treatment by a health care provider;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity.

Examples of such episodic incapacity include but are not limited to asthma, diabetes, and epilepsy.

(c) A long-term or permanent period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to an illness, injury, impairment, or physical or mental condition for which treatment may not be effective. The family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include, but are not limited to, Alzheimer's, a severe stroke, or the terminal stages of a disease.

(d) A period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated because he or she is receiving treatment (including any period of recovery therefrom) by a health care provider for:

- (1) Restorative surgery after an accident or other injury; or
- (2) A condition that would likely result in a period of incapacity of more than three consecutive full days in the absence of medical intervention or treatment. Examples include, but are not limited to, cancer (e.g., chemotherapy and radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

(ii) As used in this Title, the term treatment includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition.

Treatment does not include routine examinations. Examples of a regimen of continuing treatment includes, but is not limited to, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications (e.g., aspirin, antihistamines, or salves), bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of leave under this Title.

(iii) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for leave under this Title. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions, provided all the other conditions of this paragraph are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this paragraph are met.