

9198

I N A S S E M B L Y

February 3, 2016

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, the social services law and the workers' compensation law, in relation to reimbursement for surgical first assistant services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 32 of subsection (i) of section 3216 of the
2 insurance law, as added by a chapter of the laws of 2015 amending the
3 insurance law, the social services law and the workers' compensation
4 law, relating to reimbursement for surgical first assistant services, as
5 proposed in legislative bills numbers S.1233-A and A.1241-A, is amended
6 to read as follows:
7 (32) [Every] NO policy DELIVERED OR issued [pursuant to this section
8 which] FOR DELIVERY IN THIS STATE THAT provides reimbursement for non-
9 physician surgical first assistant services when [such] THE services are
10 provided by a non-physician surgical first assistant [who is employed by
11 a physician and the physician bills for the services] shall [not deny]
12 EXCLUDE such coverage [exclusively] on the basis that the non-physician
13 surgical first assistant services were performed by a registered nurse
14 first assistant [who is certified in operating room nursing] provided
15 that: (A) [such] THE REGISTERED NURSE FIRST ASSISTANT IS CERTIFIED IN
16 OPERATING ROOM NURSING; (B) THE services are within the scope of prac-
17 tice of a non-physician surgical first assistant; and [(B)] (C) the
18 terms and conditions of the [member contract] POLICY otherwise provide
19 for the coverage of [such] THE services. Nothing in this paragraph shall
20 be construed to[:] prevent the medical management or utilization review
21 of [such] THE services[;] OR prevent a policy from requiring THAT
22 services ARE TO BE PROVIDED through a network of participating providers
23 who [shall] meet certain requirements for participation, including
24 provider credentialing[; or prohibit an insurer from, in its sole
25 discretion, providing a global or capitated payment or electing to
26 directly reimburse a non-physician surgical first assistant for such
27 services].

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 2. Paragraph 20 of subsection (k) of section 3221 of the insurance
2 law, as added by a chapter of the laws of 2015 amending the insurance
3 law, the social services law and the workers' compensation law relating
4 to reimbursement for surgical first assistant services, as proposed in
5 legislative bills numbers S.1233-A and A.1241-A, is amended to read as
6 follows:

7 (20) [Every] NO GROUP OR BLANKET policy [issued pursuant to this
8 section which] DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE THAT
9 provides reimbursement for non-physician surgical first assistant
10 services when [such] THE services are provided by a non-physician surgi-
11 cal first assistant [who is employed by a physician and the physician
12 bills for the services] shall [not deny] EXCLUDE such coverage [exclu-
13 sively] on the basis that the non-physician surgical first assistant
14 services were performed by a registered nurse first assistant [who is
15 certified in operating room nursing] provided that: (A) [such] THE
16 REGISTERED NURSE FIRST ASSISTANT IS CERTIFIED IN OPERATING ROOM NURSING;
17 (B) THE services are within the scope of practice of a non-physician
18 surgical first assistant; and [(B)] (C) the terms and conditions of the
19 [member contract] POLICY otherwise provide for the coverage of [such]
20 THE services. Nothing in this paragraph shall be construed to[:] prevent
21 the medical management or utilization review of [such] THE services[;]
22 OR prevent a policy from requiring THAT services ARE TO BE PROVIDED
23 through a network of participating providers who [shall] meet certain
24 requirements for participation, including provider credentialing[; or
25 prohibit an insurer from, in its sole discretion, providing a global or
26 capitated payment or electing to directly reimburse a non-physician
27 surgical first assistant for such services].

28 S 3. Subsection (pp) of section 4303 of the insurance law, as added by
29 a chapter of the laws of 2015 amending the insurance law, the social
30 services law and the workers' compensation law relating to reimbursement
31 for surgical first assistant services, as proposed in legislative bills
32 numbers S.1233-A and A.1241-A, is amended to read as follows:

33 (pp) [Every] NO contract issued by a MEDICAL EXPENSE INDEMNITY CORPO-
34 RATION, HOSPITAL SERVICE CORPORATION, OR health service corporation [or
35 a medical expense indemnity corporation which] THAT provides [for]
36 reimbursement for NON-PHYSICIAN surgical first assistant services WHEN
37 THE SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT
38 shall [provide] EXCLUDE SUCH coverage [for such services when provided]
39 ON THE BASIS THAT THE NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES
40 WERE PERFORMED by a registered nurse first assistant [who is certified
41 in operating room nursing] provided that: (1) [such] THE REGISTERED
42 NURSE FIRST ASSISTANT IS CERTIFIED IN OPERATING ROOM NURSING; (2) THE
43 services are within the scope of practice of a non-physician surgical
44 first assistant; and [(2)] (3) the terms and conditions of the [member]
45 contract otherwise provide for the coverage of [such] THE services.
46 Nothing in this subsection shall be construed to[:] prevent the medical
47 management or utilization review of [such] THE services[;] OR prevent a
48 policy from requiring THAT services ARE TO BE PROVIDED through a network
49 of participating providers who [shall] meet certain requirements for
50 participation, including provider credentialing[; or prohibit an insurer
51 from, in its sole discretion, providing a global or capitated payment or
52 electing to directly reimburse a non-physician surgical first assistant
53 for such services].

54 S 4. Paragraph (cc) of subdivision 2 of section 365-a of the social
55 services law, as added by a chapter of the laws of 2015 amending the
56 insurance law, the social services law and the workers' compensation law

1 relating to reimbursement for surgical first assistant services, as
2 proposed in legislative bills numbers S.1233-A and A.1241-A, is amended
3 to read as follows:

4 (cc) care and services for surgical first assistant services provided
5 by a registered nurse first assistant [who is certified in operating
6 room nursing] provided that: (i) [such] THE REGISTERED NURSE FIRST
7 ASSISTANT IS CERTIFIED IN OPERATING ROOM NURSING; (II) THE services are
8 within the scope of practice of a non-physician surgical first assist-
9 ant; and [(ii)] (III) the terms and conditions of the [member] POLICY OR
10 contract otherwise provide for the coverage of [such] THE services.
11 Nothing in this paragraph shall be construed to[:] prevent the medical
12 management or utilization review of [such] THE services; prevent a poli-
13 cy OR CONTRACT from requiring THAT services ARE TO BE PROVIDED through a
14 network of participating providers who [shall] meet certain requirements
15 for participation, including provider credentialing; or prohibit an
16 insurer from[, in its sole discretion,] providing a global or capitated
17 payment or electing to directly reimburse a non-physician surgical first
18 assistant for [such] THE services, AS OTHERWISE PERMITTED BY LAW.

19 S 5. The opening paragraph of subdivision (a) of section 13 of the
20 workers' compensation law, as amended by a chapter of the laws of 2015
21 amending the insurance law, the social services law and the workers'
22 compensation law relating to reimbursement for surgical first assistant
23 services, as proposed in legislative bills numbers S.1233-A and
24 A.1241-A, is amended to read as follows:

25 The employer shall promptly provide for an injured employee such
26 medical, dental, surgical, optometric or other attendance or treatment,
27 nurse and hospital service, medicine, optometric services, crutches,
28 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
29 devices, functional assistive and adaptive devices and apparatus for
30 such period as the nature of the injury or the process of recovery may
31 require. The employer shall be liable for the payment of the expenses of
32 medical, dental, surgical, optometric or other attendance or treatment,
33 nurse and hospital service, medicine, optometric services, crutches,
34 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
35 devices, functional assistive and adaptive devices and apparatus, as
36 well as artificial members of the body or other devices or appliances
37 necessary in the first instance to replace, support or relieve a portion
38 or part of the body resulting from and necessitated by the injury of an
39 employee, for such period as the nature of the injury or the process of
40 recovery may require, and the employer shall also be liable for replace-
41 ments or repairs of such artificial members of the body or such other
42 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-
43 ic devices, functional assistive and adaptive devices or appliances
44 necessitated by ordinary wear or loss or damage to a prosthesis, with or
45 without bodily injury to the employee. Damage to or loss of a prosthetic
46 device shall be deemed an injury except that no disability benefits
47 shall be payable with respect to such injury under section fifteen of
48 this article. Such a replacement or repair of artificial members of the
49 body or such other devices, eye-glasses, false teeth, artificial eyes,
50 orthotics, prosthetic devices, functional assistive and adaptive devices
51 or appliances or the providing of medical treatment and care as defined
52 herein shall not constitute the payment of compensation under section
53 twenty-five-a of this article. [All surgical services covered by this
54 article, including coverage for surgical first assistant services, shall
55 include care and services furnished in all covered settings provided by
56 a registered nurse first assistant who is certified in operating room

1 nursing provided that: (A) such services are within the scope of prac-
2 tice of a non-physician surgical first assistant; and (B) the terms and
3 conditions of the member contract otherwise provide for the coverage of
4 such services. Nothing in this paragraph shall be construed to: prevent
5 the medical management or utilization review of such services; prevent a
6 policy from requiring services through a network of participating
7 providers who shall meet certain requirements for participation, includ-
8 ing provider credentialing; or prohibit an insurer from, in its sole
9 discretion, providing a global or capitated payment or electing to
10 directly reimburse a non-physician surgical first assistant for such
11 services.] All fees and other charges for such treatment and services
12 shall be limited to such charges as prevail in the same community for
13 similar treatment of injured persons of a like standard of living.
14 S 6. This act shall take effect on the same date and in the same
15 manner as a chapter of the laws of 2015 amending the insurance law, the
16 social services law and the workers' compensation law relating to
17 reimbursement for surgical first assistant services, as proposed in
18 legislative bills numbers S.1233-A and A.1241-A, takes effect.