S T A T E O F N E W Y O R K

4775

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to requiring certain health insurance coverage for lymphedema

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

Section 1. Subparagraph (A) of paragraph 20 of subsection (i) of section 3216 of the insurance law is amended by adding a new item (iii) to read as follows:

(III) PROSTHESES AND PHYSICAL COMPLICATIONS OF ALL STAGES OF MASTECTOMY, INCLUDING LYMPHEDEMA;

S 2. Subsection (i) of section 3216 of the insurance law is amended by adding two new paragraphs 26 and 27 to read as follows:

(26) EVERY POLICY WHICH PROVIDES HOSPITAL, SURGICAL, MEDICAL OR MAJOR MEDICAL COVERAGE SHALL PROVIDE COVERAGE FOR THE DIFFERENTIAL DIAGNOSIS AND TREATMENT OF LYMPHEDEMA. SUCH COVERAGE SHALL INCLUDE, IN ADDITION TO BENEFITS FOR A COURSE OF MANUAL LYMPH DRAINAGE WHOSE FREQUENCY AND DURATION IS DETERMINED BY THE TREATING PHYSICIAN OR THERAPIST BASED ON MEDICAL NECESSITY AND NOT BASED ON PHYSICAL THERAPY AND REHABILITATION STANDARDS, BENEFITS FOR EQUIPMENT, SUPPLIES, DEVICES, COMPLEX DECONGESTIVE THERAPY, AND OUT-PATIENT SELF-MANAGEMENT TRAINING AND EDUCATION FOR THE TREATMENT OF LYMPHEDEMA, IF PRESCRIBED BY A HEALTH CARE PROFESSIONAL LEGALLY AUTHORIZED TO PRESCRIBE OR PROVIDE SUCH ITEMS UNDER TITLE EIGHT OF THE EDUCATION LAW. LYMPHEDEMA THERAPY ADMINISTERED UNDER THIS SECTION SHALL BE ADMINISTERED ONLY BY A THERAPIST CERTIFIED TO PERFORM LYMPHEDEMA TREATMENT BY THE LYMPHOLOGY ASSOCIATION OF NORTH AMERICA (LANA) OR CERTIFIED IN ACCORDANCE WITH STANDARDS EQUIVALENT TO THE CERTIFICATION STANDARDS OF LANA. SUCH EQUIPMENT, SUPPLIES OR DEVICES SHALL INCLUDE, BUT NOT BE LIMITED TO, BANDAGES, COMPRESSION GARMENTS, PADS, ORTHOTIC SHOES AND DEVICES, WITH REPLACEMENTS WHEN REQUIRED TO MAINTAIN COMPRESSIVE FUNCTION OR TO ACCOMMODATE CHANGES IN THE PATIENT'S

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

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DIMENSIONS. COVERAGE SHALL BE PROVIDED FOR FOLLOW-UP TREATMENTS WHEN MEDICALLY REQUIRED OR TO PERIODICALLY VALIDATE HOME TECHNIQUES, TO MONITOR PROGRESS AGAINST THE WRITTEN TREATMENT PLAN AND TO MODIFY THE TREATMENT PLAN AS REQUIRED. NO INDIVIDUAL, OTHER THAN A LICENSED PHYSICIAN AND SURGEON COMPETENT TO EVALUATE THE SPECIFIC CLINICAL ISSUES INVOLVED IN THE CARE REQUESTED, MAY DENY REQUESTS FOR AUTHORIZATION OF HEALTH CARE SERVICES PURSUANT TO THIS SECTION.

(A) A POLICY WHICH IS A MANAGED HEALTH CARE PRODUCT MAY REQUIRE SUCH HEALTH CARE PROFESSIONAL BE A MEMBER OF SUCH MANAGED HEALTH CARE PLAN'S PROVIDER NETWORK, PROVIDED THAT SUCH NETWORK INCLUDES SUFFICIENT HEALTH CARE PROFESSIONALS WHO ARE QUALIFIED BY SPECIFIC EDUCATION, EXPERIENCE AND CREDENTIALS TO PROVIDE THE COVERED BENEFITS DESCRIBED IN THIS PARAGRAPH.

(B) NO INSURER, CORPORATION, OR HEALTH MAINTENANCE ORGANIZATION SHALL IMPOSE UPON ANY PERSON RECEIVING BENEFITS PURSUANT TO THIS PARAGRAPH ANY COPAYMENT, FEE, POLICY YEAR OR CALENDAR YEAR, OR DURATIONAL BENEFIT LIMITATION OR MAXIMUM FOR BENEFITS OR SERVICES THAT IS NOT EQUALLY IMPOSED UPON ALL INDIVIDUALS IN THE SAME BENEFIT CATEGORY.

(C) THIS PARAGRAPH SHALL NOT APPLY TO SHORT-TERM TRAVEL, ACCIDENT ONLY, LIMITED OR SPECIFIED DISEASE, OR INDIVIDUAL CONVERSION POLICIES OR CONTRACTS, NOR TO POLICIES OR CONTRACTS DESIGNED FOR ISSUANCE TO PERSONS ELIGIBLE FOR COVERAGE UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT, KNOWN AS MEDICARE, OR ANY OTHER SIMILAR COVERAGE UNDER STATE OR FEDERAL GOVERNMENTAL PLANS.

(D) FOR PURPOSES OF THIS PARAGRAPH, A "MANAGED CARE PRODUCT" SHALL MEAN A POLICY WHICH REQUIRES THAT MEDICAL OR OTHER HEALTH CARE SERVICES COVERED UNDER THE POLICY, OTHER THAN EMERGENCY CARE SERVICES, BE PROVIDED BY, OR PURSUANT TO A REFERRAL FROM A PRIMARY CARE PROVIDER, AND THAT SERVICES PROVIDED PURSUANT TO SUCH A REFERRAL BE RENDERED BY A HEALTH CARE PROVIDER PARTICIPATING IN THE INSURER'S MANAGED CARE PROVIDER NETWORK. IN ADDITION, A MANAGED CARE PRODUCT SHALL ALSO MEAN THE IN-NETWORK PORTION OF A CONTRACT WHICH REQUIRES THAT MEDICAL OR OTHER HEALTH CARE SERVICES COVERED UNDER THE CONTRACT, OTHER THAN EMERGENCY CARE SERVICES, BE PROVIDED BY, OR PURSUANT TO A REFERRAL FROM A PRIMARY CARE PROVIDER, AND THAT SERVICES PROVIDED PURSUANT TO SUCH A REFERRAL BE RENDERED BY A HEALTH CARE PROVIDER PARTICIPATING IN THE INSURER'S MANAGED CARE PROVIDER NETWORK, IN ORDER FOR THE INSURED TO BE ENTITLED TO THE MAXIMUM REIMBURSEMENT UNDER THE CONTRACT.

(27) PATIENTS UNDERGOING ANY SURGERY OR RADIOTHERAPY PROCEDURE SHALL BE PROVIDED INFORMATION ON THE RISK OF LYMPHEDEMA ASSOCIATED WITH THAT PROCEDURE, AND THE POTENTIAL POST-PROCEDURE SYMPTOMS OF LYMPHEDEMA. INFORMED CONSENT AGREEMENTS FOR ALL SURGERIES AND RADIATION THERAPIES SHALL INCLUDE INFORMATION ON THE RISK OF LYMPHEDEMA ASSOCIATED WITH THE ALTERNATIVE PROCEDURES.

S 3. Subparagraph (A) of paragraph 10 of subsection (k) of section 3221 of the insurance law is amended by adding a new item (iii) to read as follows:

(III) PROSTHESES AND PHYSICAL COMPLICATIONS OF ALL STAGES OF MASTECTOMY, INCLUDING LYMPHEDEMA;

S 4. Subsection (k) of section 3221 of the insurance law is amended by adding two new paragraphs 15 and 16 to read as follows:

(15) EVERY GROUP POLICY ISSUED OR ISSUED FOR DELIVERY IN THIS STATE WHICH PROVIDES HOSPITAL, SURGICAL, MEDICAL OR MAJOR MEDICAL COVERAGE SHALL PROVIDE COVERAGE FOR THE DIFFERENTIAL DIAGNOSIS AND TREATMENT OF LYMPHEDEMA. SUCH COVERAGE SHALL INCLUDE, IN ADDITION TO BENEFITS FOR A COURSE OF MANUAL LYMPH DRAINAGE WHOSE FREQUENCY AND DURATION IS DETER-

MINED BY THE TREATING PHYSICIAN OR THERAPIST BASED ON MEDICAL NECESSITY AND NOT BASED ON PHYSICAL THERAPY AND REHABILITATION STANDARDS, BENEFITS FOR EQUIPMENT, SUPPLIES, DEVICES, COMPLEX DECONGESTIVE THERAPY, AND OUT-PATIENT SELF-MANAGEMENT TRAINING AND EDUCATION FOR THE TREATMENT OF LYMPHEDEMA, IF PRESCRIBED BY A HEALTH CARE PROFESSIONAL LEGALLY AUTHORIZED TO PRESCRIBE OR PROVIDE SUCH ITEMS UNDER TITLE EIGHT OF THE EDUCATION LAW. LYMPHEDEMA THERAPY ADMINISTERED UNDER THIS SECTION SHALL BE ADMINISTERED ONLY BY A THERAPIST CERTIFIED TO PERFORM LYMPHEDEMA TREATMENT BY THE LYMPHOLOGY ASSOCIATION OF NORTH AMERICA (LANA) OR CERTIFIED IN ACCORDANCE WITH STANDARDS EQUIVALENT TO THE CERTIFICATION STANDARDS OF LANA. SUCH EQUIPMENT, SUPPLIES OR DEVICES SHALL INCLUDE, BUT NOT BE LIMITED TO, BANDAGES, COMPRESSION GARMENTS, PADS, ORTHOTIC SHOES AND DEVICES, WITH REPLACEMENTS WHEN REQUIRED TO MAINTAIN COMPRESSIVE FUNCTION OR TO ACCOMMODATE CHANGES IN THE PATIENT'S DIMENSIONS. COVERAGE SHALL BE PROVIDED FOR FOLLOW-UP TREATMENTS WHEN MEDICALLY REQUIRED OR TO PERIODICALLY VALIDATE HOME TECHNIQUES, TO MONITOR PROGRESS AGAINST THE WRITTEN TREATMENT PLAN AND TO MODIFY THE TREATMENT PLAN AS REQUIRED. NO INDIVIDUAL, OTHER THAN A LICENSED PHYSICIAN AND SURGEON COMPETENT TO EVALUATE THE SPECIFIC CLINICAL ISSUES INVOLVED IN THE CARE REQUESTED, MAY DENY REQUESTS FOR AUTHORIZATION OF HEALTH CARE SERVICES PURSUANT TO THIS SECTION.

(A) A POLICY WHICH IS A MANAGED HEALTH CARE PRODUCT MAY REQUIRE SUCH HEALTH CARE PROFESSIONAL BE A MEMBER OF SUCH MANAGED HEALTH CARE PLAN'S PROVIDER NETWORK, PROVIDED THAT SUCH NETWORK INCLUDES SUFFICIENT HEALTH CARE PROFESSIONALS WHO ARE QUALIFIED BY SPECIFIC EDUCATION, EXPERIENCE AND CREDENTIALS TO PROVIDE THE COVERED BENEFITS DESCRIBED IN THIS PARAGRAPH.

(B) NO INSURER, CORPORATION, OR HEALTH MAINTENANCE ORGANIZATION SHALL IMPOSE UPON ANY PERSON RECEIVING BENEFITS PURSUANT TO THIS PARAGRAPH ANY COPAYMENT, FEE, POLICY YEAR OR CALENDAR YEAR, OR DURATIONAL BENEFIT LIMITATION OR MAXIMUM FOR BENEFITS OR SERVICES THAT IS NOT EQUALLY IMPOSED UPON ALL INDIVIDUALS IN THE SAME BENEFIT CATEGORY.

(C) THIS PARAGRAPH SHALL NOT APPLY TO SHORT-TERM TRAVEL, ACCIDENT ONLY, LIMITED OR SPECIFIED DISEASE, OR INDIVIDUAL CONVERSION POLICIES OR CONTRACTS, NOR TO POLICIES OR CONTRACTS DESIGNED FOR ISSUANCE TO PERSONS ELIGIBLE FOR COVERAGE UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT, KNOWN AS MEDICARE, OR ANY OTHER SIMILAR COVERAGE UNDER STATE OR FEDERAL GOVERNMENTAL PLANS.

(D) FOR PURPOSES OF THIS PARAGRAPH, A "MANAGED CARE PRODUCT" SHALL MEAN A POLICY WHICH REQUIRES THAT MEDICAL OR OTHER HEALTH CARE SERVICES COVERED UNDER THE POLICY, OTHER THAN EMERGENCY CARE SERVICES, BE PROVIDED BY, OR PURSUANT TO A REFERRAL FROM A PRIMARY CARE PROVIDER, AND THAT SERVICES PROVIDED PURSUANT TO SUCH A REFERRAL BE RENDERED BY A HEALTH CARE PROVIDER PARTICIPATING IN THE INSURER'S MANAGED CARE PROVIDER NETWORK. IN ADDITION, A MANAGED CARE PRODUCT SHALL ALSO MEAN THE IN-NETWORK PORTION OF A CONTRACT WHICH REQUIRES THAT MEDICAL OR OTHER HEALTH CARE SERVICES COVERED UNDER THE CONTRACT, OTHER THAN EMERGENCY CARE SERVICES, BE PROVIDED BY, OR PURSUANT TO A REFERRAL FROM A PRIMARY CARE PROVIDER, AND THAT SERVICES PROVIDED PURSUANT TO SUCH A REFERRAL BE RENDERED BY A HEALTH CARE PROVIDER PARTICIPATING IN THE INSURER'S MANAGED CARE PROVIDER NETWORK, IN ORDER FOR THE INSURED TO BE ENTITLED TO THE MAXIMUM REIMBURSEMENT UNDER THE CONTRACT.

(16) PATIENTS UNDERGOING ANY SURGERY OR RADIOTHERAPY PROCEDURE SHALL BE PROVIDED INFORMATION ON THE RISK OF LYMPHEDEMA ASSOCIATED WITH THAT PROCEDURE, AND THE POTENTIAL POST-PROCEDURE SYMPTOMS OF LYMPHEDEMA. INFORMED CONSENT AGREEMENTS FOR ALL SURGERIES AND RADIATION THERAPIES

SHALL INCLUDE INFORMATION ON THE RISK OF LYMPHEDEMA ASSOCIATED WITH THE ALTERNATIVE PROCEDURES.

S 5. Paragraph 1 of subsection (x) of section 4303 of the insurance law is amended by adding a new subparagraph (C) to read as follows:

(C) PROSTHESES AND PHYSICAL COMPLICATIONS OF ALL STAGES OF MASTECTOMY, INCLUDING LYMPHEDEMA;

S 6. Section 4303 of the insurance law is amended by adding two new subsections (ff) and (gg) to read as follows:

(FF) EVERY CONTRACT ISSUED BY A HOSPITAL SERVICE CORPORATION OR HEALTH SERVICE CORPORATION WHICH PROVIDES HOSPITAL, SURGICAL, MEDICAL OR MAJOR MEDICAL COVERAGE SHALL PROVIDE COVERAGE FOR THE DIFFERENTIAL DIAGNOSIS AND TREATMENT OF LYMPHEDEMA. SUCH COVERAGE SHALL INCLUDE, IN ADDITION TO BENEFITS FOR A COURSE OF MANUAL LYMPH DRAINAGE WHOSE FREQUENCY AND DURATION IS DETERMINED BY THE TREATING PHYSICIAN OR THERAPIST BASED ON MEDICAL NECESSITY AND NOT BASED ON PHYSICAL THERAPY AND REHABILITATION STANDARDS, BENEFITS FOR EQUIPMENT, SUPPLIES, DEVICES, COMPLEX DECONGESTIVE THERAPY, AND OUT-PATIENT SELF-MANAGEMENT TRAINING AND EDUCATION FOR THE TREATMENT OF LYMPHEDEMA, IF PRESCRIBED BY A HEALTH CARE PROFESSIONAL LEGALLY AUTHORIZED TO PRESCRIBE OR PROVIDE SUCH ITEMS UNDER TITLE EIGHT OF THE EDUCATION LAW. LYMPHEDEMA THERAPY ADMINISTERED UNDER THIS SECTION SHALL BE ADMINISTERED ONLY BY A THERAPIST CERTIFIED TO PERFORM LYMPHEDEMA TREATMENT BY THE LYMPHOLOGY ASSOCIATION OF NORTH AMERICA (LANA) OR CERTIFIED IN ACCORDANCE WITH STANDARDS EQUIVALENT TO THE CERTIFICATION STANDARDS OF LANA. SUCH EQUIPMENT, SUPPLIES OR DEVICES SHALL INCLUDE, BUT NOT BE LIMITED TO, BANDAGES, COMPRESSION GARMENTS, PADS, ORTHOTIC SHOES AND DEVICES, WITH REPLACEMENTS WHEN REQUIRED TO MAINTAIN COMPRESSIVE FUNCTION OR TO ACCOMMODATE CHANGES IN THE PATIENT'S DIMENSIONS. COVERAGE SHALL BE PROVIDED FOR FOLLOW-UP TREATMENTS WHEN MEDICALLY REQUIRED OR TO PERIODICALLY VALIDATE HOME TECHNIQUES, TO MONITOR PROGRESS AGAINST THE WRITTEN TREATMENT PLAN AND TO MODIFY THE TREATMENT PLAN AS REQUIRED. NO INDIVIDUAL, OTHER THAN A LICENSED PHYSICIAN AND SURGEON COMPETENT TO EVALUATE THE SPECIFIC CLINICAL ISSUES INVOLVED IN THE CARE REQUESTED, MAY DENY REQUESTS FOR AUTHORIZATION OF HEALTH CARE SERVICES PURSUANT TO THIS SECTION.

(1) A POLICY WHICH IS A MANAGED HEALTH CARE PRODUCT MAY REQUIRE SUCH HEALTH CARE PROFESSIONAL BE A MEMBER OF SUCH MANAGED HEALTH CARE PLAN'S PROVIDER NETWORK, PROVIDED THAT SUCH NETWORK INCLUDES SUFFICIENT HEALTH CARE PROFESSIONALS WHO ARE QUALIFIED BY SPECIFIC EDUCATION, EXPERIENCE AND CREDENTIALS TO PROVIDE THE COVERED BENEFITS DESCRIBED IN THIS SUBSECTION.

(2) NO INSURER, CORPORATION, OR HEALTH MAINTENANCE ORGANIZATION SHALL IMPOSE UPON ANY PERSON RECEIVING BENEFITS PURSUANT TO THIS SUBSECTION ANY COPAYMENT, FEE, POLICY YEAR OR CALENDAR YEAR, OR DURATIONAL BENEFIT LIMITATION OR MAXIMUM FOR BENEFITS OR SERVICES THAT IS NOT EQUALLY IMPOSED UPON ALL INDIVIDUALS IN THE SAME BENEFIT CATEGORY.

(3) THIS SUBSECTION SHALL NOT APPLY TO SHORT-TERM TRAVEL, ACCIDENT ONLY, LIMITED OR SPECIFIED DISEASE, OR INDIVIDUAL CONVERSION POLICIES OR CONTRACTS, NOR TO POLICIES OR CONTRACTS DESIGNED FOR ISSUANCE TO PERSONS ELIGIBLE FOR COVERAGE UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT, KNOWN AS MEDICARE, OR ANY OTHER SIMILAR COVERAGE UNDER STATE OR FEDERAL GOVERNMENTAL PLANS.

(4) FOR PURPOSES OF THIS SUBSECTION, A "MANAGED CARE PRODUCT" SHALL MEAN A POLICY WHICH REQUIRES THAT MEDICAL OR OTHER HEALTH CARE SERVICES COVERED UNDER THE POLICY, OTHER THAN EMERGENCY CARE SERVICES, BE PROVIDED BY, OR PURSUANT TO A REFERRAL FROM A PRIMARY CARE PROVIDER, AND THAT SERVICES PROVIDED PURSUANT TO SUCH A REFERRAL BE RENDERED BY A

HEALTH CARE PROVIDER PARTICIPATING IN THE INSURER'S MANAGED CARE PROVIDER NETWORK. IN ADDITION, A MANAGED CARE PRODUCT SHALL ALSO MEAN THE IN-NETWORK PORTION OF A CONTRACT WHICH REQUIRES THAT MEDICAL OR OTHER HEALTH CARE SERVICES COVERED UNDER THE CONTRACT, OTHER THAN EMERGENCY CARE SERVICES, BE PROVIDED BY, OR PURSUANT TO A REFERRAL FROM A PRIMARY CARE PROVIDER, AND THAT SERVICES PROVIDED PURSUANT TO SUCH A REFERRAL BE RENDERED BY A HEALTH CARE PROVIDER PARTICIPATING IN THE INSURER'S MANAGED CARE PROVIDER NETWORK, IN ORDER FOR THE INSURED TO BE ENTITLED TO THE MAXIMUM REIMBURSEMENT UNDER THE CONTRACT.

(GG) PATIENTS UNDERGOING ANY SURGERY OR RADIOTHERAPY PROCEDURE SHALL BE PROVIDED INFORMATION ON THE RISK OF LYMPHEDEMA ASSOCIATED WITH THAT PROCEDURE, AND THE POTENTIAL POST-PROCEDURE SYMPTOMS OF LYMPHEDEMA. INFORMED CONSENT AGREEMENTS FOR ALL SURGERIES AND RADIATION THERAPIES SHALL INCLUDE INFORMATION ON THE RISK OF LYMPHEDEMA ASSOCIATED WITH THE ALTERNATIVE PROCEDURES.

S 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all insurance policies, contracts and plans issued, renewed, modified, altered or amended on or after such effective date.