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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. CAHILL, GUNTHER, CHRISTENSEN, CYMBROWITZ, FIELDS, N. RIVERA, ESPAILLAT, COOK, BENEDETTO -- Multi-Sponsored by -- M. of A. BING, BOYLAND, GOTTFRIED, JOHN, LATIMER, LIFTON, McENENY, PAULIN, REILLY -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subsection (i) of section 3216 of the insurance law is amended by adding a new paragraph 27 to read as follows:

(27) EVERY POLICY ISSUED PURSUANT TO THIS SECTION WHICH PROVIDES REIMBURSEMENT FOR NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WHEN SUCH SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT WHO IS EMPLOYED BY A PHYSICIAN AND THE PHYSICIAN BILLS FOR THE SERVICES SHALL NOT DENY SUCH COVERAGE EXCLUSIVELY ON THE BASIS THAT THE NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WERE PERFORMED BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-

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

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ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH SERVICES.

S 2. Subsection (k) of section 3221 of the insurance law is amended by adding a new paragraph 16 to read as follows:

(16) EVERY POLICY ISSUED PURSUANT TO THIS SECTION WHICH PROVIDES REIMBURSEMENT FOR NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WHEN SUCH SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT WHO IS EMPLOYED BY A PHYSICIAN AND THE PHYSICIAN BILLS FOR THE SERVICES SHALL NOT DENY SUCH COVERAGE EXCLUSIVELY ON THE BASIS THAT THE NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WERE PERFORMED BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH SERVICES.

S 3. Section 4303 of the insurance law is amended by adding a new subsection (gg) to read as follows:

(GG) EVERY CONTRACT ISSUED BY A HEALTH SERVICE CORPORATION OR A MEDICAL EXPENSE INDEMNITY CORPORATION WHICH PROVIDES FOR REIMBURSEMENT FOR SURGICAL FIRST ASSISTANT SERVICES SHALL PROVIDE COVERAGE FOR SUCH SERVICES WHEN PROVIDED BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING PROVIDED THAT: (1) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (2) THE TERMS AND CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH SERVICES.

S 4. Subdivision 2 of section 365-a of the social services law is amended by adding a new paragraph (v) to read as follows:

(V) CARE AND SERVICES FOR SURGICAL FIRST ASSISTANT SERVICES PROVIDED BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING PROVIDED THAT: (I) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (II) THE TERMS AND CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES: PREVENT A POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH SERVICES.

S 5. Subparagraphs (xv) and (xvi) of paragraph (e) of subdivision 1 of section 369-ee of the social services law, subparagraph (xv) as amended and subparagraph (xvi) as added by chapter 526 of the laws of 2002, are amended and a new subparagraph (xvii) is added to read as follows:

(xv) services provided to meet the requirements of 42 U.S.C. 1396d(r); [and]

(xvi) hospice services[.]; AND

(XVII) SURGICAL FIRST ASSISTANT SERVICES PERFORMED BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH SERVICES.

S 6. The opening paragraph of subdivision (a) of section 13 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

The employer shall promptly provide for an injured employee such medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus for such period as the nature of the injury or the process of recovery may require. The employer shall be liable for the payment of the expenses of medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus, as well as artificial members of the body or other devices or appliances necessary in the first instance to replace, support or relieve a portion or part of the body resulting from and necessitated by the injury of an employee, for such period as the nature of the injury or the process of recovery may require, and the employer shall also be liable for replacements or repairs of such artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances necessitated by ordinary wear or loss or damage to a prosthesis, with or without bodily injury to the employee. Damage to or loss of a prosthetic device shall be deemed an injury except that no disability benefits shall be payable with respect to such injury under section fifteen of this article. Such a replacement or repair of artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances or the providing of medical treatment and care as defined herein shall not constitute the payment of compensation under section twenty-five-a of this article. ALL SURGICAL SERVICES COVERED BY THIS ARTICLE, INCLUDING COVERAGE FOR SURGICAL FIRST ASSISTANT SERVICES, SHALL INCLUDE CARE AND SERVICES FURNISHED IN ALL COVERED SETTINGS PROVIDED BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRAC-

TICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUDING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH SERVICES. All fees and other charges for such treatment and services shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such effective date.