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I N   A S S E M B L Y

May 10, 2012

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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. Subsection (i) of section 3216 of the insurance law is  
2     amended by adding a new paragraph 29 to read as follows:  
3     (29) EVERY POLICY ISSUED PURSUANT TO THIS SECTION WHICH PROVIDES  
4     REIMBURSEMENT FOR NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WHEN  
5     SUCH SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT  
6     WHO IS EMPLOYED BY A PHYSICIAN AND THE PHYSICIAN BILLS FOR THE SERVICES  
7     SHALL NOT DENY SUCH COVERAGE EXCLUSIVELY ON THE BASIS THAT THE NON-PHY-  
8     SICIAN SURGICAL FIRST ASSISTANT SERVICES WERE PERFORMED BY A REGISTERED  
9     NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING  
10    PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A  
11    NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS  
12    OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH  
13    SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE  
14    MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A  
15    POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING  
16    PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-  
17    ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE  
18    DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO  
19    DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH  
20    SERVICES.  
21    S 2. Subsection (k) of section 3221 of the insurance law is amended by  
22    adding a new paragraph 18 to read as follows:  
23    (18) EVERY POLICY ISSUED PURSUANT TO THIS SECTION WHICH PROVIDES  
24    REIMBURSEMENT FOR NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WHEN  
25    SUCH SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT  
26    WHO IS EMPLOYED BY A PHYSICIAN AND THE PHYSICIAN BILLS FOR THE SERVICES  
27    SHALL NOT DENY SUCH COVERAGE EXCLUSIVELY ON THE BASIS THAT THE NON-PHY-

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

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

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

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

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

33 (AA) CARE AND SERVICES FOR SURGICAL FIRST ASSISTANT SERVICES PROVIDED  
34 BY A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM  
35 NURSING PROVIDED THAT: (I) SUCH SERVICES ARE WITHIN THE SCOPE OF PRAC-  
36 TICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (II) THE TERMS AND  
37 CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF  
38 SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT  
39 THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES: PREVENT A  
40 POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING  
41 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-  
42 ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE  
43 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO  
44 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH  
45 SERVICES.

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

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

52 (xvi) hospice services[.]; AND

53 (XVII) SURGICAL FIRST ASSISTANT SERVICES PERFORMED BY A REGISTERED  
54 NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING  
55 PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A  
56 NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS

1 OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH  
2 SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE  
3 MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A  
4 POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING  
5 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-  
6 ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE  
7 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO  
8 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH  
9 SERVICES.

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

13 The employer shall promptly provide for an injured employee such  
14 medical, dental, surgical, optometric or other attendance or treatment,  
15 nurse and hospital service, medicine, optometric services, crutches,  
16 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
17 devices, functional assistive and adaptive devices and apparatus for  
18 such period as the nature of the injury or the process of recovery may  
19 require. The employer shall be liable for the payment of the expenses of  
20 medical, dental, surgical, optometric or other attendance or treatment,  
21 nurse and hospital service, medicine, optometric services, crutches,  
22 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
23 devices, functional assistive and adaptive devices and apparatus, as  
24 well as artificial members of the body or other devices or appliances  
25 necessary in the first instance to replace, support or relieve a portion  
26 or part of the body resulting from and necessitated by the injury of an  
27 employee, for such period as the nature of the injury or the process of  
28 recovery may require, and the employer shall also be liable for replace-  
29 ments or repairs of such artificial members of the body or such other  
30 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-  
31 ic devices, functional assistive and adaptive devices or appliances  
32 necessitated by ordinary wear or loss or damage to a prosthesis, with or  
33 without bodily injury to the employee. Damage to or loss of a prosthetic  
34 device shall be deemed an injury except that no disability benefits  
35 shall be payable with respect to such injury under section fifteen of  
36 this article. Such a replacement or repair of artificial members of the  
37 body or such other devices, eye-glasses, false teeth, artificial eyes,  
38 orthotics, prosthetic devices, functional assistive and adaptive devices  
39 or appliances or the providing of medical treatment and care as defined  
40 herein shall not constitute the payment of compensation under section  
41 twenty-five-a of this article. ALL SURGICAL SERVICES COVERED BY THIS  
42 ARTICLE, INCLUDING COVERAGE FOR SURGICAL FIRST ASSISTANT SERVICES, SHALL  
43 INCLUDE CARE AND SERVICES FURNISHED IN ALL COVERED SETTINGS PROVIDED BY  
44 A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM  
45 NURSING PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRAC-  
46 TICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND  
47 CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF  
48 SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT  
49 THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A  
50 POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING  
51 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-  
52 ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE  
53 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO  
54 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH  
55 SERVICES. All fees and other charges for such treatment and services

1 shall be limited to such charges as prevail in the same community for  
2 similar treatment of injured persons of a like standard of living.  
3 S 7. This act shall take effect on the one hundred eightieth day after  
4 it shall have become a law and shall apply to all policies and contracts  
5 issued, renewed, modified, altered or amended on or after such effective  
6 date.