

4138

2011-2012 Regular Sessions

I N S E N A T E

March 21, 2011

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed 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 28 to read as follows:
3 (28) 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 17 to read as follows:
23 (17) EVERY POLICY ISSUED PURSUANT TO THIS SECTION WHICH PROVIDES
24 REIMBURSEMENT FOR NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WHEN

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

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1 SUCH SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT
2 WHO IS EMPLOYED BY A PHYSICIAN AND THE PHYSICIAN BILLS FOR THE SERVICES
3 SHALL NOT DENY SUCH COVERAGE EXCLUSIVELY ON THE BASIS THAT THE NON-PHY-
4 SICIAN SURGICAL FIRST ASSISTANT SERVICES WERE PERFORMED BY A REGISTERED
5 NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM NURSING
6 PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRACTICE OF A
7 NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND CONDITIONS
8 OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF SUCH
9 SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT THE
10 MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A
11 POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING
12 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-
13 ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE
14 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO
15 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH
16 SERVICES.

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

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

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

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

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

53 (xv) services provided to meet the requirements of 42 U.S.C. 1396d(r);
54 [and]
55 (xvi) hospice services[.]; AND

1 (XVII) SURGICAL FIRST ASSISTANT SERVICES 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 6. The opening paragraph of subdivision (a) of section 13 of the
15 workers' compensation law, as amended by chapter 6 of the laws of 2007,
16 is amended to read as follows:

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

1 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO
2 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH
3 SERVICES. All fees and other charges for such treatment and services
4 shall be limited to such charges as prevail in the same community for
5 similar treatment of injured persons of a like standard of living.
6 S 7. This act shall take effect on the one hundred eightieth day after
7 it shall have become a law and shall apply to all policies and contracts
8 issued, renewed, modified, altered or amended on or after such effective
9 date.