

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

4138--B

2011-2012 Regular Sessions

I N S E N A T E

March 21, 2011

Introduced by Sens. LITTLE, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, 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:

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

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

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1 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH
2 SERVICES.

3 S 2. Subsection (k) of section 3221 of the insurance law is amended by
4 adding a new paragraph 18 to read as follows:

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

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

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

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

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

55 S 5. Subparagraphs (xv) and (xvi) of paragraph (e) of subdivision 1 of
56 section 369-ee of the social services law, subparagraph (xv) as amended

1 and subparagraph (xvi) as added by chapter 526 of the laws of 2002, are
2 amended and a new subparagraph (xvii) is added to read as follows:

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

5 (xvi) hospice services[.]; AND

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

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

22 The employer shall promptly provide for an injured employee such
23 medical, dental, surgical, optometric or other attendance or treatment,
24 nurse and hospital service, medicine, optometric services, crutches,
25 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
26 devices, functional assistive and adaptive devices and apparatus for
27 such period as the nature of the injury or the process of recovery may
28 require. The employer shall be liable for the payment of the expenses of
29 medical, dental, surgical, optometric or other attendance or treatment,
30 nurse and hospital service, medicine, optometric services, crutches,
31 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
32 devices, functional assistive and adaptive devices and apparatus, as
33 well as artificial members of the body or other devices or appliances
34 necessary in the first instance to replace, support or relieve a portion
35 or part of the body resulting from and necessitated by the injury of an
36 employee, for such period as the nature of the injury or the process of
37 recovery may require, and the employer shall also be liable for replace-
38 ments or repairs of such artificial members of the body or such other
39 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-
40 ic devices, functional assistive and adaptive devices or appliances
41 necessitated by ordinary wear or loss or damage to a prosthesis, with or
42 without bodily injury to the employee. Damage to or loss of a prosthetic
43 device shall be deemed an injury except that no disability benefits
44 shall be payable with respect to such injury under section fifteen of
45 this article. Such a replacement or repair of artificial members of the
46 body or such other devices, eye-glasses, false teeth, artificial eyes,
47 orthotics, prosthetic devices, functional assistive and adaptive devices
48 or appliances or the providing of medical treatment and care as defined
49 herein shall not constitute the payment of compensation under section
50 twenty-five-a of this article. ALL SURGICAL SERVICES COVERED BY THIS
51 ARTICLE, INCLUDING COVERAGE FOR SURGICAL FIRST ASSISTANT SERVICES, SHALL
52 INCLUDE CARE AND SERVICES FURNISHED IN ALL COVERED SETTINGS PROVIDED BY
53 A REGISTERED NURSE FIRST ASSISTANT WHO IS CERTIFIED IN OPERATING ROOM
54 NURSING PROVIDED THAT: (A) SUCH SERVICES ARE WITHIN THE SCOPE OF PRAC-
55 TICE OF A NON-PHYSICIAN SURGICAL FIRST ASSISTANT; AND (B) THE TERMS AND
56 CONDITIONS OF THE MEMBER CONTRACT OTHERWISE PROVIDE FOR THE COVERAGE OF

1 SUCH SERVICES. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO: PREVENT
2 THE MEDICAL MANAGEMENT OR UTILIZATION REVIEW OF SUCH SERVICES; PREVENT A
3 POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING
4 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-
5 ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE
6 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO
7 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH
8 SERVICES. All fees and other charges for such treatment and services
9 shall be limited to such charges as prevail in the same community for
10 similar treatment of injured persons of a like standard of living.
11 S 7. This act shall take effect on the one hundred eightieth day after
12 it shall have become a law and shall apply to all policies and contracts
13 issued, renewed, modified, altered or amended on or after such effective
14 date.