

S T A T E   O F   N E W   Y O R K

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2944--A

2013-2014 Regular Sessions

I N   S E N A T E

January 25, 2013

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Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to registration of office-based surgery facilities and payments for the use thereof

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

1     Section 1. Legislative intent. The legislature hereby finds that New  
2     York state is home to approximately 1,000 accredited physician-owned  
3     ambulatory surgery facilities, referred to as Office-Based Surgery (OBS)  
4     practices, currently providing patient access to virtually all types of  
5     covered outpatient surgical procedures safely and at a lower cost  
6     compared to other settings, including traditional ambulatory surgery  
7     centers and hospitals.  
8     The legislature further finds that advances in medicine, including  
9     surgical techniques, equipment and improvements in anesthesia enable  
10    procedures to be performed safely, conveniently and at a much lower cost  
11    in an office-based setting. In fact, conservative estimates show physi-  
12    cian-owned ambulatory surgery facilities can achieve cost savings of  
13    30%-40% as compared with other settings. The enviable safety record of  
14    the accredited OBS industry is also well established.  
15    The legislature also finds that like many states, New York is experi-  
16    encing a growing physician shortage. The problem is compounded for  
17    accredited office-based surgery facilities and the patients they treat  
18    by the recent refusal on the part of many third party payers to reim-  
19    burse facility costs for covered procedures. These expenses are substan-  
20    tial and include capital costs, equipment usage, supplies and overhead.  
21    The motives behind these denials are inexplicable given that this venue  
22    represents the lowest-cost provider. In fact, it was not long ago that  
23    insurers were consistently reimbursing OBS practices for their facility

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

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1 costs. Practitioners invested in their practices dependent on these  
2 established reimbursement practices. Without the mechanism to negotiate  
3 with the payers, these mostly small or solo practices lack the clout and  
4 market power to negotiate and convince insurers to reinstate reimburse-  
5 ment.

6 The legislature also finds that lack of reimbursement has driven many  
7 physician owned ambulatory surgery practices out of the market. Many  
8 more are likely to follow resulting in thousands of lost jobs, decreased  
9 access to care and substantially higher costs to patients and the over-  
10 all healthcare delivery system.

11 The legislature further finds that while office-based surgery prac-  
12 tices are recognized in statute pursuant to the accreditation require-  
13 ments in section 230-d of the public health law, there is nothing in  
14 current law or regulations that specifically identifies accredited  
15 office-based surgery entities as facilities entitled to seek reimburse-  
16 ment for facility related costs.

17 Therefore, the legislature hereby declares that, due to the integral  
18 role that accredited office-based surgery practices play in the safe,  
19 efficient and low-cost delivery of surgical services, as well as the  
20 need to protect and enhance patient safety and access to affordable care  
21 for all New Yorkers, it is in the interest of the people of this state  
22 to further enhance recognition of accredited office-based surgery prac-  
23 tice and protect and encourage a robust and successful industry in this  
24 state.

25 S 2. Clause (i) of subparagraph (A) of paragraph 1 of subsection (e)  
26 and subsection (g) of section 4900 of the insurance law, as amended by  
27 chapter 558 of the laws of 1999, are amended to read as follows:

28 (i) provided by a facility licensed, CERTIFIED OR ACCREDITED pursuant  
29 to SECTION TWO HUNDRED THIRTY-D, article twenty-eight, thirty-six,  
30 forty-four or forty-seven of the public health law or pursuant to arti-  
31 cle nineteen, [twenty-three,] thirty-one or thirty-two of the mental  
32 hygiene law; or

33 (g) "Health care provider" means a health care professional or a  
34 facility licensed, CERTIFIED OR ACCREDITED pursuant to SECTION TWO  
35 HUNDRED THIRTY-D, article twenty-eight, thirty-six, forty-four or  
36 forty-seven of the public health law or a facility licensed OR CERTIFIED  
37 pursuant to article nineteen, [twenty-three,] thirty-one or thirty-two  
38 of the mental hygiene law.

39 S 3. Paragraph 2 of subsection (b) of section 4901 of the insurance  
40 law, as added by chapter 705 of the laws of 1996, is amended to read as  
41 follows:

42 (2) Those circumstances, if any, under which utilization review may be  
43 delegated to a utilization review program conducted by a facility  
44 licensed, CERTIFIED OR ACCREDITED pursuant to SECTION TWO HUNDRED THIR-  
45 TY-D OR article twenty-eight of the public health law or pursuant to  
46 article thirty-one of the mental hygiene law;

47 S 4. Subsection (b) of section 4906 of the insurance law, as added by  
48 chapter 237 of the laws of 2009, is amended to read as follows:

49 (b) Notwithstanding subsection (a) of this section, in lieu of the  
50 external appeal process as set forth in this article, a health care plan  
51 and a facility licensed, CERTIFIED OR ACCREDITED pursuant to SECTION TWO  
52 HUNDRED THIRTY-D OR article twenty-eight of the public health law may  
53 agree to an alternative dispute resolution mechanism to resolve disputes  
54 otherwise subject to this article.

55 S 5. This act shall take effect immediately and shall be deemed to  
56 have been in full force and effect on and after January 18, 2009 with

1 respect to claims and appeals filed for health care services provided at  
2 facilities subject to the provisions of section 230-d of the public  
3 health law during the period of time which such facilities remain fully  
4 licensed, certified or accredited pursuant to such section.