

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

2753--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 17, 2013

Introduced by M. of A. LAVINE, MORELLE -- read once and referred to the Committee on Insurance -- 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

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 30 to read as follows:
3 (30) 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.

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

LBD06435-03-4

1 S 2. Subsection (k) of section 3221 of the insurance law is amended by
2 adding a new paragraph 19 to read as follows:

3 (19) 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 3. Section 4303 of the insurance law is amended by adding a new
22 subsection (oo) to read as follows:

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

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

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

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

1 (xv) services provided to meet the requirements of 42 U.S.C. 1396d(r);
2 [and]
3 (xvi) hospice services[.]; AND
4 (XVII) SURGICAL FIRST ASSISTANT SERVICES 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 SUBPARAGRAPH SHALL BE CONSTRUED TO: PREVENT
10 THE 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 6. The opening paragraph of subdivision (a) of section 13 of the
18 workers' compensation law, as amended by chapter 6 of the laws of 2007,
19 is amended to read as follows:

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

1 POLICY FROM REQUIRING SERVICES THROUGH A NETWORK OF PARTICIPATING
2 PROVIDERS WHO SHALL MEET CERTAIN REQUIREMENTS FOR PARTICIPATION, INCLUD-
3 ING PROVIDER CREDENTIALING; OR PROHIBIT AN INSURER FROM, IN ITS SOLE
4 DISCRETION, PROVIDING A GLOBAL OR CAPITATED PAYMENT OR ELECTING TO
5 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH
6 SERVICES. All fees and other charges for such treatment and services
7 shall be limited to such charges as prevail in the same community for
8 similar treatment of injured persons of a like standard of living.
9 S 7. This act shall take effect on the one hundred eightieth day after
10 it shall have become a law and shall apply to all policies and contracts
11 issued, renewed, modified, altered or amended on or after such effective
12 date; provided, however, that the amendments made to section 369-ee of
13 the social services law by section five of this act shall not affect the
14 repeal of such section and shall be deemed to be repealed therewith.