

1233--A

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I N S E N A T E

January 9, 2015

Introduced by Sens. LITTLE, AVELLA, LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 32 to read as follows:
3 (32) 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 20 to read as follows:

5 (20) 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 (pp) to read as follows:

25 (PP) 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 SUBSECTION
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 (cc) to read as follows:

42 (CC) 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.

1 S 5. The opening paragraph of subdivision (a) of section 13 of the
2 workers' compensation law, as amended by chapter 6 of the laws of 2007,
3 is amended to read as follows:

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

49 S 6. This act shall take effect on the one hundred eightieth day after
50 it shall have become a law and shall apply to all policies and contracts
51 issued, renewed, modified, altered or amended on or after such effective
52 date.