

6392--A

Cal. No. 23

I N S E N A T E

January 8, 2016

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- reported favorably from said committee, 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. Paragraph 32 of subsection (i) of section 3216 of the
2 insurance law, as added by a chapter of the laws of 2015 amending the
3 insurance law, the social services law and the workers' compensation
4 law, relating to reimbursement for surgical first assistant services, as
5 proposed in legislative bills numbers S.1233-A and A.1241-A, is amended
6 to read as follows:
7 (32) [Every] NO policy DELIVERED OR issued [pursuant to this section
8 which] FOR DELIVERY IN THIS STATE THAT provides reimbursement for non-
9 physician surgical first assistant services when [such] THE services are
10 provided by a non-physician surgical first assistant [who is employed by
11 a physician and the physician bills for the services] shall [not deny]
12 EXCLUDE such coverage [exclusively] on the basis that the non-physician
13 surgical first assistant services were performed by a registered nurse
14 first assistant [who is certified in operating room nursing] provided
15 that: (A) [such] THE REGISTERED NURSE FIRST ASSISTANT IS CERTIFIED IN
16 OPERATING ROOM NURSING; (B) THE services are within the scope of prac-
17 tice of a non-physician surgical first assistant; and [(B)] (C) the
18 terms and conditions of the [member contract] POLICY otherwise provide
19 for the coverage of [such] THE services. Nothing in this paragraph shall
20 be construed to[:] prevent the medical management or utilization review
21 of [such] THE services[;] OR prevent a policy from requiring THAT
22 services ARE TO BE PROVIDED through a network of participating providers
23 who [shall] meet certain requirements for participation, including

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

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1 provider credentialing[; or prohibit an insurer from, in its sole
2 discretion, providing a global or capitated payment or electing to
3 directly reimburse a non-physician surgical first assistant for such
4 services].

5 S 2. Paragraph 20 of subsection (k) of section 3221 of the insurance
6 law, as added by a chapter of the laws of 2015 amending the insurance
7 law, the social services law and the workers' compensation law relating
8 to reimbursement for surgical first assistant services, as proposed in
9 legislative bills numbers S.1233-A and A.1241-A, is amended to read as
10 follows:

11 (20) [Every] NO GROUP OR BLANKET policy [issued pursuant to this
12 section which] DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE THAT
13 provides reimbursement for non-physician surgical first assistant
14 services when [such] THE services are provided by a non-physician surgi-
15 cal first assistant [who is employed by a physician and the physician
16 bills for the services] shall [not deny] EXCLUDE such coverage [exclu-
17 sively] on the basis that the non-physician surgical first assistant
18 services were performed by a registered nurse first assistant [who is
19 certified in operating room nursing] provided that: (A) [such] THE
20 REGISTERED NURSE FIRST ASSISTANT IS CERTIFIED IN OPERATING ROOM NURSING;
21 (B) THE services are within the scope of practice of a non-physician
22 surgical first assistant; and [(B)] (C) the terms and conditions of the
23 [member contract] POLICY otherwise provide for the coverage of [such]
24 THE services. Nothing in this paragraph shall be construed to[:] prevent
25 the medical management or utilization review of [such] THE services[;]
26 OR prevent a policy from requiring THAT services ARE TO BE PROVIDED
27 through a network of participating providers who [shall] meet certain
28 requirements for participation, including provider credentialing[; or
29 prohibit an insurer from, in its sole discretion, providing a global or
30 capitated payment or electing to directly reimburse a non-physician
31 surgical first assistant for such services].

32 S 3. Subsection (pp) of section 4303 of the insurance law, as added by
33 a chapter of the laws of 2015 amending the insurance law, the social
34 services law and the workers' compensation law relating to reimbursement
35 for surgical first assistant services, as proposed in legislative bills
36 numbers S.1233-A and A.1241-A, is amended to read as follows:

37 (pp) [Every] NO contract issued by a MEDICAL EXPENSE INDEMNITY CORPO-
38 RATION, HOSPITAL SERVICE CORPORATION, OR health service corporation [or
39 a medical expense indemnity corporation which] THAT provides [for]
40 reimbursement for NON-PHYSICIAN surgical first assistant services WHEN
41 THE SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT
42 shall [provide] EXCLUDE SUCH coverage [for such services when provided]
43 ON THE BASIS THAT THE NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES
44 WERE PERFORMED by a registered nurse first assistant [who is certified
45 in operating room nursing] provided that: (1) [such] THE REGISTERED
46 NURSE FIRST ASSISTANT IS CERTIFIED IN OPERATING ROOM NURSING; (2) THE
47 services are within the scope of practice of a non-physician surgical
48 first assistant; and [(2)] (3) the terms and conditions of the [member]
49 contract otherwise provide for the coverage of [such] THE services.
50 Nothing in this subsection shall be construed to[:] prevent the medical
51 management or utilization review of [such] THE services[;] OR prevent a
52 policy from requiring THAT services ARE TO BE PROVIDED through a network
53 of participating providers who [shall] meet certain requirements for
54 participation, including provider credentialing[; or prohibit an insurer
55 from, in its sole discretion, providing a global or capitated payment or

1 electing to directly reimburse a non-physician surgical first assistant
2 for such services].

3 S 4. Paragraph (cc) of subdivision 2 of section 365-a of the social
4 services law, as added by a chapter of the laws of 2015 amending the
5 insurance law, the social services law and the workers' compensation law
6 relating to reimbursement for surgical first assistant services, as
7 proposed in legislative bills numbers S.1233-A and A.1241-A, is amended
8 to read as follows:

9 (cc) care and services for surgical first assistant services provided
10 by a registered nurse first assistant [who is certified in operating
11 room nursing] provided that: (i) [such] THE REGISTERED NURSE FIRST
12 ASSISTANT IS CERTIFIED IN OPERATING ROOM NURSING; (II) THE services are
13 within the scope of practice of a non-physician surgical first assist-
14 ant; and [(ii)] (III) the terms and conditions of the [member] POLICY OR
15 contract otherwise provide for the coverage of [such] THE services.
16 Nothing in this paragraph shall be construed to[:] prevent the medical
17 management or utilization review of [such] THE services; prevent a poli-
18 cy OR CONTRACT from requiring THAT services ARE TO BE PROVIDED through a
19 network of participating providers who [shall] meet certain requirements
20 for participation, including provider credentialing; or prohibit an
21 insurer from[, in its sole discretion,] providing a global or capitated
22 payment or electing to directly reimburse a non-physician surgical first
23 assistant for [such] THE services, AS OTHERWISE PERMITTED BY LAW.

24 S 5. The opening paragraph of subdivision (a) of section 13 of the
25 workers' compensation law, as amended by a chapter of the laws of 2015
26 amending the insurance law, the social services law and the workers'
27 compensation law relating to reimbursement for surgical first assistant
28 services, as proposed in legislative bills numbers S.1233-A and
29 A.1241-A, is amended to read as follows:

30 The employer shall promptly provide for an injured employee such
31 medical, dental, surgical, optometric or other attendance or treatment,
32 nurse and hospital service, medicine, optometric services, crutches,
33 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
34 devices, functional assistive and adaptive devices and apparatus for
35 such period as the nature of the injury or the process of recovery may
36 require. The employer shall be liable for the payment of the expenses of
37 medical, dental, surgical, optometric or other attendance or treatment,
38 nurse and hospital service, medicine, optometric services, crutches,
39 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
40 devices, functional assistive and adaptive devices and apparatus, as
41 well as artificial members of the body or other devices or appliances
42 necessary in the first instance to replace, support or relieve a portion
43 or part of the body resulting from and necessitated by the injury of an
44 employee, for such period as the nature of the injury or the process of
45 recovery may require, and the employer shall also be liable for replace-
46 ments or repairs of such artificial members of the body or such other
47 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-
48 ic devices, functional assistive and adaptive devices or appliances
49 necessitated by ordinary wear or loss or damage to a prosthesis, with or
50 without bodily injury to the employee. Damage to or loss of a prosthetic
51 device shall be deemed an injury except that no disability benefits
52 shall be payable with respect to such injury under section fifteen of
53 this article. Such a replacement or repair of artificial members of the
54 body or such other devices, eye-glasses, false teeth, artificial eyes,
55 orthotics, prosthetic devices, functional assistive and adaptive devices
56 or appliances or the providing of medical treatment and care as defined

1 herein shall not constitute the payment of compensation under section
2 twenty-five-a of this article. [All surgical services covered by this
3 article, including coverage for surgical first assistant services, shall
4 include care and services furnished in all covered settings provided by
5 a registered nurse first assistant who is certified in operating room
6 nursing provided that: (A) such services are within the scope of prac-
7 tice of a non-physician surgical first assistant; and (B) the terms and
8 conditions of the member contract otherwise provide for the coverage of
9 such services. Nothing in this paragraph 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.] All fees and other charges for such treatment and services
17 shall be limited to such charges as prevail in the same community for
18 similar treatment of injured persons of a like standard of living.

19 S 6. This act shall take effect on the same date and in the same
20 manner as a chapter of the laws of 2015 amending the insurance law, the
21 social services law and the workers' compensation law relating to
22 reimbursement for surgical first assistant services, as proposed in
23 legislative bills numbers S.1233-A and A.1241-A, takes effect.