

1241

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. LAVINE, MORELLE, SKOUFIS, WEPRIN, CYMBROWITZ,
WALTER -- Multi-Sponsored by -- M. of A. CORWIN -- read once and
referred to the Committee on Insurance

AN ACT to amend the insurance law, the social services law and the work-
ers' compensation law, in relation to reimbursement for surgical first
assistant services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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
19 DIRECTLY REIMBURSE A NON-PHYSICIAN SURGICAL FIRST ASSISTANT FOR SUCH
20 SERVICES.

21 S 2. Subsection (k) of section 3221 of the insurance law is amended by
22 adding a new paragraph 20 to read as follows:

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

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1 (20) EVERY POLICY ISSUED PURSUANT TO THIS SECTION WHICH PROVIDES
2 REIMBURSEMENT FOR NON-PHYSICIAN SURGICAL FIRST ASSISTANT SERVICES WHEN
3 SUCH SERVICES ARE PROVIDED BY A NON-PHYSICIAN SURGICAL FIRST ASSISTANT
4 WHO IS EMPLOYED BY A PHYSICIAN AND THE PHYSICIAN BILLS FOR THE SERVICES
5 SHALL NOT DENY SUCH COVERAGE EXCLUSIVELY ON THE BASIS THAT THE NON-PHY-
6 SICIAN SURGICAL FIRST ASSISTANT SERVICES WERE 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 3. Section 4303 of the insurance law is amended by adding a new
20 subsection (pp) to read as follows:

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

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

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

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

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

1 (xvi) hospice services[.]; AND

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

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

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

1 ING 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. All fees and other charges for such treatment and services
5 shall be limited to such charges as prevail in the same community for
6 similar treatment of injured persons of a like standard of living.
7 S 7. This act shall take effect on the one hundred eightieth day after
8 it shall have become a law and shall apply to all policies and contracts
9 issued, renewed, modified, altered or amended on or after such effective
10 date; provided, however, that the amendments made to section 369-ee of
11 the social services law by section five of this act shall not affect the
12 repeal of such section and shall be deemed to be repealed therewith.