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I N   A S S E M B L Y

February 3, 2016

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

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

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

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

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

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

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

54 S 4. Paragraph (cc) of subdivision 2 of section 365-a of the social  
55 services law, as added by a chapter of the laws of 2015 amending the  
56 insurance law, the social services law and the workers' compensation law

1 relating to reimbursement for surgical first assistant services, as  
2 proposed in legislative bills numbers S.1233-A and A.1241-A, is amended  
3 to read as follows:

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

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

25 The employer shall promptly provide for an injured employee such  
26 medical, dental, surgical, optometric or other attendance or treatment,  
27 nurse and hospital service, medicine, optometric services, crutches,  
28 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
29 devices, functional assistive and adaptive devices and apparatus for  
30 such period as the nature of the injury or the process of recovery may  
31 require. The employer shall be liable for the payment of the expenses of  
32 medical, dental, surgical, optometric or other attendance or treatment,  
33 nurse and hospital service, medicine, optometric services, crutches,  
34 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
35 devices, functional assistive and adaptive devices and apparatus, as  
36 well as artificial members of the body or other devices or appliances  
37 necessary in the first instance to replace, support or relieve a portion  
38 or part of the body resulting from and necessitated by the injury of an  
39 employee, for such period as the nature of the injury or the process of  
40 recovery may require, and the employer shall also be liable for replace-  
41 ments or repairs of such artificial members of the body or such other  
42 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-  
43 ic devices, functional assistive and adaptive devices or appliances  
44 necessitated by ordinary wear or loss or damage to a prosthesis, with or  
45 without bodily injury to the employee. Damage to or loss of a prosthetic  
46 device shall be deemed an injury except that no disability benefits  
47 shall be payable with respect to such injury under section fifteen of  
48 this article. Such a replacement or repair of artificial members of the  
49 body or such other devices, eye-glasses, false teeth, artificial eyes,  
50 orthotics, prosthetic devices, functional assistive and adaptive devices  
51 or appliances or the providing of medical treatment and care as defined  
52 herein shall not constitute the payment of compensation under section  
53 twenty-five-a of this article. [All surgical services covered by this  
54 article, including coverage for surgical first assistant services, shall  
55 include care and services furnished in all covered settings provided by  
56 a registered nurse first assistant who is certified in operating room

1 nursing provided that: (A) such services are within the scope of prac-  
2 tice of a non-physician surgical first assistant; and (B) the terms and  
3 conditions of the member contract otherwise provide for the coverage of  
4 such services. Nothing in this paragraph shall be construed to: prevent  
5 the medical management or utilization review of such services; prevent a  
6 policy from requiring services through a network of participating  
7 providers who shall meet certain requirements for participation, includ-  
8 ing provider credentialing; or prohibit an insurer from, in its sole  
9 discretion, providing a global or capitated payment or electing to  
10 directly reimburse a non-physician surgical first assistant for such  
11 services.] All fees and other charges for such treatment and services  
12 shall be limited to such charges as prevail in the same community for  
13 similar treatment of injured persons of a like standard of living.  
14 S 6. This act shall take effect on the same date and in the same  
15 manner as a chapter of the laws of 2015 amending the insurance law, the  
16 social services law and the workers' compensation law relating to  
17 reimbursement for surgical first assistant services, as proposed in  
18 legislative bills numbers S.1233-A and A.1241-A, takes effect.