

STATE OF NEW YORK

2903

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

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

AN ACT to amend the insurance law, in relation to registration of office-based surgery facilities and payments for the use thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature hereby finds that New
2 York state is home to approximately 1,000 accredited physician-owned
3 ambulatory surgery facilities, referred to as Office-Based Surgery (OBS)
4 practices, currently providing patient access to virtually all types of
5 covered outpatient surgical procedures safely and at a lower cost
6 compared to other settings, including traditional ambulatory surgery
7 centers and hospitals.

8 The legislature further finds that advances in medicine, including
9 surgical techniques, equipment and improvements in anesthesia enable
10 procedures to be performed safely, conveniently and at a much lower cost
11 in an office-based setting. In fact, conservative estimates show physi-
12 cian-owned ambulatory surgery facilities can achieve cost savings of
13 30%-40% as compared with other settings. The enviable safety record of
14 the accredited OBS industry is also well established.

15 The legislature also finds that like many states, New York is experi-
16 encing a growing physician shortage. The problem is compounded for
17 accredited office-based surgery facilities and the patients they treat
18 by the recent refusal on the part of many third party payers to reim-
19 burse facility costs for covered procedures. These expenses are substan-
20 tial and include capital costs, equipment usage, supplies and overhead.
21 The motives behind these denials are inexplicable given that this venue
22 represents the lowest-cost provider. In fact, it was not long ago that
23 insurers were consistently reimbursing OBS practices for their facility
24 costs. Practitioners invested in their practices dependent on these
25 established reimbursement practices. Without the mechanism to negotiate
26 with the payers, these mostly small or solo practices lack the clout and
27 market power to negotiate and convince insurers to reinstate reimburse-
28 ment.

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

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1 The legislature also finds that lack of reimbursement has driven many
2 physician owned ambulatory surgery practices out of the market. Many
3 more are likely to follow resulting in thousands of lost jobs, decreased
4 access to care and substantially higher costs to patients and the over-
5 all healthcare delivery system.

6 The legislature further finds that while office-based surgery prac-
7 tices are recognized in statute pursuant to the accreditation require-
8 ments in section 230-d of the public health law, there is nothing in
9 current law or regulations that specifically identifies accredited
10 office-based surgery entities as facilities entitled to seek reimburse-
11 ment for facility related costs.

12 Therefore, the legislature hereby declares that, due to the integral
13 role that accredited office-based surgery practices play in the safe,
14 efficient and low-cost delivery of surgical services, as well as the
15 need to protect and enhance patient safety and access to affordable care
16 for all New Yorkers, it is in the interest of the people of this state
17 to further enhance recognition of accredited office-based surgery prac-
18 tice and protect and encourage a robust and successful industry in this
19 state.

20 § 2. Clause (i) of subparagraph (A) of paragraph 1 of subsection (e)
21 and subsection (g) of section 4900 of the insurance law, as amended by
22 chapter 558 of the laws of 1999, are amended to read as follows:

23 (i) provided by a facility licensed, certified or accredited pursuant
24 to section two hundred thirty-d, article twenty-eight, thirty-six,
25 forty-four or forty-seven of the public health law or pursuant to arti-
26 cle nineteen, [~~twenty-three~~] thirty-one or thirty-two of the mental
27 hygiene law; or

28 (g) "Health care provider" means a health care professional or a
29 facility licensed, certified or accredited pursuant to section two
30 hundred thirty-d, article twenty-eight, thirty-six, forty-four or
31 forty-seven of the public health law or a facility licensed or certified
32 pursuant to article nineteen, [~~twenty-three~~] thirty-one or thirty-two
33 of the mental hygiene law.

34 § 3. Paragraph 2 of subsection (b) of section 4901 of the insurance
35 law, as added by chapter 705 of the laws of 1996, is amended to read as
36 follows:

37 (2) Those circumstances, if any, under which utilization review may be
38 delegated to a utilization review program conducted by a facility
39 licensed, certified or accredited pursuant to section two hundred thir-
40 ty-d or article twenty-eight of the public health law or pursuant to
41 article thirty-one of the mental hygiene law;

42 § 4. Subsection (b) of section 4906 of the insurance law, as added by
43 chapter 237 of the laws of 2009, is amended to read as follows:

44 (b) Notwithstanding subsection (a) of this section, in lieu of the
45 external appeal process as set forth in this article, a health care plan
46 and a facility licensed, certified or accredited pursuant to section two
47 hundred thirty-d or article twenty-eight of the public health law may
48 agree to an alternative dispute resolution mechanism to resolve disputes
49 otherwise subject to this article.

50 § 5. This act shall take effect immediately and shall be deemed to
51 have been in full force and effect on and after January 18, 2009 with
52 respect to claims and appeals filed for health care services provided at
53 facilities subject to the provisions of section 230-d of the public
54 health law during the period of time which such facilities remain fully
55 licensed, certified or accredited pursuant to such section.