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:

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

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

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

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

LBD01352-01-9

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

The legislature further finds that while office-based surgery practices are recognized in statute pursuant to the accreditation requirements in section 230-d of the public health law, there is nothing in current law or regulations that specifically identifies accredited office-based surgery entities as facilities entitled to seek reimbursement for facility related costs.

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

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

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

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

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

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

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

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

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