

1 HOUSE BILL 131

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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5 and Joshua N. Hernandez and John Block and Siah Correa Hemphill
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10 AN ACT

11 RELATING TO HEALTH CARE COVERAGE; ENACTING NEW SECTIONS OF THE
12 HEALTH CARE PURCHASING ACT AND THE NEW MEXICO INSURANCE CODE TO
13 REQUIRE COVERAGE FOR EXPENSES RELATED TO PROSTHETICS AND CUSTOM
14 ORTHOTIC DEVICES; REQUIRING REPORTING.
15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of the Health Care Purchasing
18 Act is enacted to read:

19 "[NEW MATERIAL] PROSTHETIC DEVICES--CUSTOM ORTHOTIC
20 DEVICES--MINIMUM COVERAGE.--

21 A. Group health coverage, including any form of
22 self-insurance, offered, issued or renewed under the Health
23 Care Purchasing Act, shall provide coverage for prosthetics and
24 custom orthotics that is at least equivalent to that coverage
25 currently provided by the federal medicare program and no less

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1 favorable than the terms and conditions that the group health
2 plan offers for medical and surgical benefits.

3 B. A group health plan shall cover the most
4 appropriate prosthetic or custom orthotic device determined to
5 be medically necessary by the enrollee's treating physician and
6 associated medical providers to restore or maintain the ability
7 to complete activities of daily living or essential job-related
8 activities and that is not solely for the comfort or
9 convenience of the enrollee. This coverage shall include all
10 services and supplies necessary for the effective use of a
11 prosthetic or custom orthotic device, including:

12 (1) formulation of its design, fabrication,
13 material and component selection, measurements, fittings and
14 static and dynamic alignments;

15 (2) all materials and components necessary to
16 use it;

17 (3) instructing the enrollee in the use of it;
18 and

19 (4) the repair and replacement of it.

20 C. A group health plan shall cover a prosthetic or
21 custom orthotic device determined by the enrollee's provider to
22 be the most appropriate model that meets the medical needs of
23 the enrollee for performing physical activities, including
24 running, biking and swimming and to maximize the enrollee's
25 upper limb function. This coverage shall include all services

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1 and supplies necessary for the effective use of a prosthetic or
2 custom orthotic device, including:

3 (1) formulation of its design, fabrication,
4 material and component selection, measurements, fittings and
5 static and dynamic alignments;

6 (2) all materials and components necessary to
7 use it;

8 (3) instructing the enrollee in the use of it;
9 and

10 (4) the repair and replacement of it.

11 D. A group health plan's reimbursement rate for
12 prosthetic and custom orthotic devices shall be at least
13 equivalent to that currently provided by the federal medicare
14 program and no more restrictive than other coverage under the
15 group health plan.

16 E. Prosthetic and custom orthotic device coverage
17 shall be comparable to coverage for other medical and surgical
18 benefits under the group health plan, including restorative
19 internal devices such as internal prosthetic devices, and shall
20 not be subject to spending limits or lifetime restrictions.

21 F. Prosthetic and custom orthotic device coverage
22 shall not be subject to separate financial requirements that
23 are applicable only with respect to that coverage. A group
24 health plan may impose cost sharing on prosthetic or custom
25 orthotic devices; provided that any cost-sharing requirements

1 shall not be more restrictive than the cost-sharing
2 requirements applicable to the plan's medical and surgical
3 benefits, including those for internal devices.

4 G. A group health plan may limit the coverage for,
5 or alter the cost-sharing requirements for, out-of-network
6 coverage of prosthetic and custom orthotic devices; provided
7 that the restrictions and cost-sharing requirements applicable
8 to prosthetic or custom orthotic devices shall not be more
9 restrictive than the restrictions and requirements applicable
10 to the out-of-network coverage for a group health plan's
11 medical and surgical coverage.

12 H. The requirements of this section shall apply
13 separately with respect to coverage benefits provided under a
14 group health plan on an in-network basis and benefits provided
15 under that group health plan on an out-of-network basis.

16 I. A group health plan shall not impose any annual
17 or lifetime dollar maximum on coverage for prosthetic or custom
18 orthotic devices, other than an annual or lifetime dollar
19 maximum that applies in the aggregate to all terms and services
20 covered under the group health plan.

21 J. If coverage is provided through a managed care
22 plan, an enrollee shall have access to medically necessary
23 clinical care and to prosthetic and custom orthotic devices and
24 technology from not less than two distinct prosthetic and
25 custom orthotic providers in the managed care plan's provider

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1 network located in the state.

2 K. Coverage for prosthetic and custom orthotic
3 devices shall be considered habilitative or rehabilitative
4 benefits for purposes of any state or federal requirement for
5 coverage of essential health benefits, including habilitative
6 and rehabilitative benefits."

7 SECTION 2. A new section of the New Mexico Insurance Code
8 is enacted to read:

9 "[NEW MATERIAL] PROSTHETIC DEVICES--CUSTOM ORTHOTIC
10 DEVICES--MINIMUM COVERAGE.--

11 A. A health plan shall provide coverage for
12 prosthetic and custom orthotic devices that is at least
13 equivalent to that currently provided by the federal medicare
14 program and no less favorable than the terms and conditions
15 that the health plan offers for medical and surgical benefits.

16 B. A health plan shall cover the most appropriate
17 prosthetic or custom orthotic device determined to be medically
18 necessary by the enrollee's treating physician and associated
19 medical providers to restore or maintain the ability to
20 complete activities of daily living or essential job-related
21 activities and that is not solely for the comfort or
22 convenience of the enrollee. This coverage shall include all
23 services and supplies necessary for the effective use of a
24 prosthetic or custom orthotic device, including:

25 (1) formulation of its design, fabrication,

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1 material and component selection, measurements, fittings and
2 static and dynamic alignments;

3 (2) all materials and components necessary to
4 use it;

5 (3) instructing the enrollee in the use of it;
6 and

7 (4) the repair and replacement of it.

8 C. A health plan shall cover a prosthetic or custom
9 orthotic device determined by the enrollee's provider to be the
10 most appropriate model that meets the medical needs of the
11 enrollee for performing physical activities, including running,
12 biking and swimming and to maximize the enrollee's upper limb
13 function. This coverage shall include all services and
14 supplies necessary for the effective use of a prosthetic or
15 custom orthotic device, including:

16 (1) formulation of its design, fabrication,
17 material and component selection, measurements, fittings and
18 static and dynamic alignments;

19 (2) all materials and components necessary to
20 use it;

21 (3) instructing the enrollee in the use of it;
22 and

23 (4) the repair and replacement of it.

24 D. A health plan's reimbursement rate for
25 prosthetic and custom orthotic devices shall be at least

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1 equivalent to that currently provided by the federal medicare
2 program and no more restrictive than other coverage under the
3 health plan.

4 E. Coverage for prosthetic and custom orthotic
5 devices shall be comparable to coverage for other medical and
6 surgical benefits under the health plan, including restorative
7 internal devices such as internal prosthetic devices, and shall
8 not be subject to spending limits or lifetime restrictions.

9 F. Prosthetic and custom orthotic device coverage
10 shall not be subject to separate financial requirements that
11 are applicable only with respect to that coverage. A health
12 plan may impose cost sharing on prosthetic or custom orthotic
13 devices; provided that any cost-sharing requirements shall not
14 be more restrictive than the cost-sharing requirements
15 applicable to the plan's medical and surgical benefits,
16 including those for internal devices.

17 G. A health plan may limit the coverage for or
18 alter the cost-sharing requirements for out-of-network coverage
19 of prosthetic and custom orthotic devices; provided that the
20 restrictions and requirements applicable to prosthetic or
21 custom orthotic devices shall not be more restrictive than the
22 restrictions and requirements applicable to the out-of-network
23 coverage for a health plan's medical and surgical coverage.

24 H. The requirements of this section shall apply
25 separately with respect to coverage benefits provided under a

1 health plan on an in-network basis and benefits provided under
2 that health plan on an out-of-network basis.

3 I. A health plan shall not impose any annual or
4 lifetime dollar maximum on coverage for prosthetic or custom
5 orthotic devices other than an annual or lifetime dollar
6 maximum that applies in the aggregate to all terms and services
7 covered under the health plan.

8 J. If coverage is provided through a managed care
9 plan or health maintenance organization, an enrollee shall have
10 access to medically necessary clinical care and to prosthetic
11 and custom orthotic devices and technology from not less than
12 two distinct prosthetic and custom orthotic providers in the
13 managed care plan's or health maintenance organization's
14 provider network, which providers shall be located in the
15 state.

16 K. As used in this section, "health plan":

17 (1) means the following types of major medical
18 coverage:

19 (a) an individual or group health
20 insurance policy, health care plan or certificate of health
21 insurance subject to the provisions of Article 22 or Article 23
22 of the Insurance Code that is delivered, issued for delivery or
23 renewed in this state;

24 (b) an individual or group health
25 maintenance organization contract subject to the Health

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1 Maintenance Organization Law that is delivered, issued for
2 delivery or renewed in this state; and

3 (c) an individual or group health care
4 plan subject to the provisions of the Nonprofit Health Care
5 Plan Law that is delivered, issued for delivery or renewed in
6 this state; and

7 (2) does not mean a health insurance or health
8 coverage policy, plan or certificate of coverage that is
9 intended to supplement major medical group-type coverage, such
10 as medicare supplement, long-term care, disability income,
11 specified disease, accident only, hospital indemnity or any
12 other limited-benefit health insurance policy."

13 SECTION 3. [NEW MATERIAL] REPORTING.--No later than
14 November 1, 2024 and annually thereafter, the superintendent of
15 insurance shall report aggregated data, including the number
16 and cost of claims paid pursuant to Sections 1 and 2 of this
17 2023 act, to the legislative health and human services
18 committee and the legislative finance committee.

19 SECTION 4. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2024.