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HOUSE BILL 38

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

Kathleen Cates

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE HEALTH CARE PURCHASING ACT AND THE NEW MEXICO INSURANCE CODE TO REQUIRE COVERAGE FOR WHEELCHAIRS AND ACTIVITY CHAIRS; PROVIDING THAT DENIAL OF A WHEELCHAIR OR AN ACTIVITY CHAIR WITH RESPECT TO A HEALTH BENEFITS PLAN IS AN UNFAIR AND DECEPTIVE PRACTICE IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 13-7-46 NMSA 1978 (being Laws 2023, Chapter 196, Section 1) is amended to read:

"13-7-46. PROSTHETIC DEVICES--CUSTOM ORTHOTIC DEVICES--
WHEELCHAIRS--ACTIVITY CHAIRS--MINIMUM COVERAGE.--

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for ~~[prosthetics and~~
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1 ~~custom orthotics]~~ prosthetic devices, custom orthotic devices,
2 wheelchairs or activity chairs that is at least equivalent to
3 that coverage currently provided by the federal medicare
4 program and no less favorable than the terms and conditions
5 that the group health plan offers for medical and surgical
6 benefits if the item is for a person with documented permanent
7 physical conditions, including limb loss, limb absence, limb
8 difference, paralysis or neuromuscular or musculoskeletal
9 conditions, that significantly limit the person's ability to
10 independently and safely ambulate, stand, perform functional
11 mobility or engage in physical activity necessary for whole-
12 body health.

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

24 (1) formulation of its design, fabrication,
25 material and component selection, measurements, fittings and

1 static and dynamic alignments;

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

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

6 (4) the repair and replacement of it.

7 C. A group health plan shall cover a prosthetic ~~[or]~~
8 device, a custom orthotic device, a wheelchair or an activity
9 chair determined by the enrollee's provider to be the most
10 appropriate model that meets the medical needs of the enrollee
11 for performing physical activities, including running, biking
12 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 device, a custom orthotic device, a wheelchair or an activity
16 chair, including:

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

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

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

24 (4) the repair and replacement of it.

25 D. A group health plan's reimbursement rate for

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1 prosthetic [~~and~~] devices, custom orthotic devices, wheelchairs
2 or activity chairs shall be at least equivalent to that
3 currently provided by the federal medicare program and no more
4 restrictive than other coverage under the group health plan.

5 E. Prosthetic [~~and~~] device, custom orthotic device,
6 wheelchair or activity chair coverage shall be comparable to
7 coverage for other medical and surgical benefits under the
8 group health plan, including restorative internal devices such
9 as internal prosthetic devices, and shall not be subject to
10 spending limits or lifetime restrictions.

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

20 G. A group health plan may limit the coverage for,
21 or alter the cost-sharing requirements for, out-of-network
22 coverage of prosthetic [~~and~~] devices, custom orthotic devices,
23 wheelchairs or activity chairs; provided that the restrictions
24 and cost-sharing requirements applicable to prosthetic [~~or~~]
25 devices, custom orthotic devices, wheelchairs or activity

1 chairs shall not be more restrictive than the restrictions and
2 requirements applicable to the out-of-network coverage for a
3 group health plan's medical and surgical coverage.

4 H. In the event that medically necessary covered
5 ~~[orthotics and prosthetics]~~ prosthetic devices, custom orthotic
6 devices, wheelchairs or activity chairs are not available from
7 an in-network provider, the insurer shall provide processes to
8 refer a member to an out-of-network provider and shall fully
9 reimburse the out-of-network provider at a mutually agreed upon
10 rate less member cost sharing determined on an in-network
11 basis.

12 I. A group health plan shall not impose any annual
13 or lifetime dollar maximum on coverage for prosthetic ~~[or]~~
14 devices, custom orthotic devices, wheelchairs or activity
15 chairs other than an annual or lifetime dollar maximum that
16 applies in the aggregate to all terms and services covered
17 under the group health plan.

18 J. If coverage is provided through a managed care
19 plan, an enrollee shall have access to medically necessary
20 clinical care and to prosthetic ~~[and]~~ devices, custom orthotic
21 devices, wheelchairs, activity chairs and technology from not
22 less than two distinct prosthetic ~~[and]~~ device, custom orthotic
23 device, wheelchair or activity chair providers in the managed
24 care plan's provider network located in the state.

25 K. Coverage for prosthetic ~~[and]~~ devices, custom

1 orthotic devices, wheelchairs or activity chairs shall be
2 considered habilitative or rehabilitative benefits for purposes
3 of any state or federal requirement for coverage of essential
4 health benefits, including habilitative and rehabilitative
5 benefits.

6 L. If coverage for prosthetic ~~[or]~~ devices, custom
7 orthotic devices, wheelchairs or activity chairs is provided,
8 payment shall be made for the replacement of a prosthetic ~~[or]~~
9 device, a custom orthotic device, a wheelchair or an activity
10 chair or for the replacement of any part of such ~~[devices]~~
11 items, without regard to continuous use or useful lifetime
12 restrictions, if an ordering health care provider determines
13 that the provision of a replacement ~~[device]~~ item, or a
14 replacement part of such ~~[a device]~~ an item, is necessary
15 because of any of the following:

16 (1) a change in the physiological condition of
17 the patient;

18 (2) an irreparable change in the condition of
19 the ~~[device]~~ item or in a part of the ~~[device]~~ item; or

20 (3) the condition of the ~~[device]~~ item or the
21 part of the ~~[device]~~ item requires repairs, and the cost of
22 such repairs would be more than sixty percent of the cost of a
23 replacement ~~[device]~~ item or of the part being replaced.

24 M. Confirmation from a prescribing health care
25 provider may be required if the prosthetic ~~[or]~~ device, custom

1 orthotic device, wheelchair or activity chair or part being
2 replaced is less than three years old.

3 N. A group health plan subject to the Health Care
4 Purchasing Act shall not discriminate against individuals based
5 on disability, including limb loss, absence or malformation.

6 O. For the purposes of this section, "activity
7 chair" means a device that is designed specifically to enable a
8 person with mobility impairment to participate in physical
9 activities by providing better speed, safety, stability,
10 maneuverability and balance than a standard wheelchair that is
11 designed for activities of daily living."

12 SECTION 2. Section 59A-16-21.4 NMSA 1978 (being Laws
13 2023, Chapter 196, Section 2) is amended to read:

14 "59A-16-21.4. UNFAIR TRADE PRACTICES ON THE BASIS OF
15 DISABILITY PROHIBITED.--

16 A. Any of the following practices with respect to a
17 health benefits plan are defined as unfair and deceptive
18 practices and are prohibited:

19 (1) canceling or changing the premiums,
20 benefits or conditions of a health benefits plan on the basis
21 of an insured's actual or perceived disability;

22 (2) denying a prosthetic ~~[or]~~ device, a custom
23 orthotic device, a wheelchair or an activity chair benefit ~~[for~~
24 ~~an individual with limb loss or absence]~~ that would otherwise
25 be covered for a non-disabled person seeking medical or

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1 surgical intervention to restore or maintain the ability to
2 perform the same physical activity if the item is for a person
3 with documented permanent physical conditions, including limb
4 loss, limb absence, limb difference, paralysis or neuromuscular
5 or musculoskeletal conditions, that significantly limit the
6 person's ability to independently and safely ambulate, stand,
7 perform functional mobility or engage in physical activity
8 necessary for whole-body health;

9 (3) failure to apply the most recent version
10 of treatment and fit criteria developed by the professional
11 association with the most relevant clinical specialty when
12 performing a utilization review for a request for coverage of
13 prosthetic ~~[øø]~~ device, custom orthotic device, wheelchair or
14 activity chair benefits; and

15 (4) failure to apply medical necessity review
16 standards developed by the professional association with the
17 most relevant clinical specialty when conducting utilization
18 management review or processing appeals regarding benefit
19 denial.

20 B. For purposes of this section:

21 (1) "activity chair" means a device that is
22 designed specifically to enable a person with mobility
23 impairment to participate in physical activities by providing
24 better speed, safety, stability, maneuverability and balance
25 than a standard wheelchair that is designed for activities of

1 daily living; and

2 (2) "health benefits plan" means a policy or
3 agreement entered into, offered or issued by a health insurance
4 carrier to provide, deliver, arrange for, pay for or reimburse
5 the costs of health care services; provided that "health
6 benefits plan" does not include the following:

7 [~~(1)~~] (a) an accident-only policy;
8 [~~(2)~~] (b) a credit-only policy;
9 [~~(3)~~] (c) a long- or short-term care or
10 disability income policy;

11 [~~(4)~~] (d) a specified disease policy;
12 [~~(5)~~] (e) coverage provided pursuant to
13 Title 18 of the federal Social Security Act, as amended;

14 [~~(6)~~] (f) coverage provided pursuant to
15 Title 19 of the federal Social Security Act and the Public
16 Assistance Act;

17 [~~(7)~~] (g) a federal TRICARE policy,
18 including a federal civilian health and medical program of the
19 uniformed services supplement;

20 [~~(8)~~] (h) a fixed or hospital indemnity
21 policy;

22 [~~(9)~~] (i) a dental-only policy;

23 [~~(10)~~] (j) a vision-only policy;

24 [~~(11)~~] (k) a workers' compensation
25 policy;

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1 [~~(12)~~] (1) an automobile medical payment
2 policy; or

3 [~~(13)~~] (m) any other policy specified in
4 rules of the superintendent."

5 SECTION 3. Section 59A-22-62 NMSA 1978 (being Laws 2023,
6 Chapter 196, Section 3) is amended to read:

7 "59A-22-62. MEDICAL NECESSITY AND NONDISCRIMINATION
8 STANDARDS FOR COVERAGE OF [~~PROSTHETICS OR ORTHOTICS~~] PROSTHETIC
9 DEVICES, CUSTOM ORTHOTIC DEVICES, WHEELCHAIRS OR ACTIVITY
10 CHAIRS.--

11 A. An individual health plan that is delivered,
12 issued for delivery or renewed in this state that offers
13 coverage for prosthetic [~~and~~] devices, custom orthotic devices,
14 wheelchairs or activity chairs shall consider these benefits
15 habilitative or rehabilitative benefits for purposes of any
16 state or federal requirement for coverage of essential health
17 benefits.

18 B. When performing a utilization review for a
19 request for coverage of prosthetic [~~or~~] device, custom orthotic
20 device, wheelchair or activity chair benefits, an insurer shall
21 apply the most recent version of evidence-based treatment and
22 fit criteria as recognized by relevant clinical specialists or
23 their organizations. Such standards may be named by the
24 superintendent in rule.

25 C. An insurer shall render utilization review

1 determinations in a nondiscriminatory manner and shall not deny
2 coverage for habilitative or rehabilitative benefits, including
3 ~~[prosthetics or orthotics]~~ prosthetic devices, custom orthotic
4 devices, wheelchairs or activity chairs, solely on the basis of
5 an insured's actual or perceived disability.

6 D. An insurer shall not deny a prosthetic ~~[or]~~
7 device, a custom orthotic device, a wheelchair or an activity
8 chair benefit ~~[for an individual with limb loss or absence]~~
9 that would otherwise be covered for a non-disabled person
10 seeking medical or surgical intervention to restore or maintain
11 the ability to perform the same physical activity if the item
12 is for a person with documented permanent physical conditions,
13 including limb loss, limb absence, limb difference, paralysis
14 or neuromuscular or musculoskeletal conditions, that
15 significantly limit the person's ability to independently and
16 safely ambulate, stand, perform functional mobility or engage
17 in physical activity necessary for whole-body health.

18 E. A health benefits plan that is delivered, issued
19 for delivery or renewed in this state that offers coverage for
20 ~~[prosthetics and]~~ prosthetic devices, custom orthotic devices,
21 wheelchairs or activity chairs shall include language
22 describing an insured's rights pursuant to Subsections C and D
23 of this section in its evidence of coverage and any benefit
24 denial letters.

25 F. Prosthetic ~~[and]~~ device, custom orthotic device,

1 wheelchair or activity chair coverage shall not be subject to
2 separate financial requirements that are applicable only with
3 respect to that coverage. An individual health plan may impose
4 cost sharing on prosthetic ~~[or]~~ devices, custom orthotic
5 devices, wheelchairs or activity chairs; provided that any
6 cost-sharing requirements shall not be more restrictive than
7 the cost-sharing requirements applicable to the plan's coverage
8 for inpatient physician and surgical services.

9 G. A health plan that provides coverage for
10 ~~[prosthetic or orthotic]~~ services related to prosthetic
11 devices, custom orthotic devices, wheelchairs or activity
12 chairs shall ensure access to medically necessary clinical care
13 and to prosthetic ~~[and]~~ devices, custom orthotic devices,
14 wheelchairs, activity chairs and technology from not less than
15 two distinct prosthetic ~~[and]~~ device, custom orthotic device,
16 wheelchair or activity chair providers in the managed care
17 plan's provider network located in the state. In the event
18 that medically necessary covered ~~[orthotics and prosthetics]~~
19 prosthetic devices, custom orthotic devices, wheelchairs or
20 activity chairs are not available from an in-network provider,
21 the insurer shall provide processes to refer a member to an
22 out-of-network provider and shall fully reimburse the out-of-
23 network provider at a mutually agreed upon rate less member
24 cost sharing determined on an in-network basis.

25 H. If coverage for prosthetic ~~[or]~~ devices, custom

1 orthotic devices, wheelchairs or activity chairs is provided,
2 payment shall be made for the replacement of a prosthetic [~~or~~]
3 device, a custom orthotic device, a wheelchair or an activity
4 chair or for the replacement of any part of such [~~devices~~]
5 items, without regard to continuous use or useful lifetime
6 restrictions, if an ordering health care provider determines
7 that the provision of a replacement [~~device~~] item, or a
8 replacement part of such [~~a device~~] an item, is necessary
9 because of any of the following:

10 (1) a change in the physiological condition of
11 the patient;

12 (2) an irreparable change in the condition of
13 the [~~device~~] item or in a part of the [~~device~~] item; or

14 (3) the condition of the [~~device~~] item or the
15 part of the [~~device~~] item requires repairs, and the cost of
16 such repairs would be more than sixty percent of the cost of a
17 replacement [~~device~~] item or of the part being replaced.

18 I. Confirmation from a prescribing health care
19 provider may be required if the prosthetic [~~or~~] device, custom
20 orthotic device, wheelchair, activity chair or part being
21 replaced is less than three years old.

22 J. The provisions of this section do not apply to
23 excepted benefits plans subject to the Short-Term Health Plan
24 and Excepted Benefit Act.

25 K. For the purposes of this section, "activity

1 chair" means a device that is designed specifically to enable a
2 person with mobility impairment to participate in physical
3 activities by providing better speed, safety, stability,
4 maneuverability and balance than a standard wheelchair that is
5 designed for activities of daily living."

6 SECTION 4. Section 59A-23-32 NMSA 1978 (being Laws 2023,
7 Chapter 196, Section 4) is amended to read:

8 "59A-23-32. MEDICAL NECESSITY AND NONDISCRIMINATION
9 STANDARDS FOR COVERAGE OF ~~[PROSTHETICS AND ORTHOTICS]~~
10 PROSTHETIC DEVICES, CUSTOM ORTHOTIC DEVICES, WHEELCHAIRS OR
11 ACTIVITY CHAIRS.--

12 A. A group health plan that is delivered, issued
13 for delivery or renewed in this state that covers essential
14 health benefits or covers prosthetic ~~[and]~~ devices, custom
15 orthotic devices, wheelchairs or activity chairs shall consider
16 these benefits habilitative or rehabilitative benefits for
17 purposes of state or federal requirements on essential health
18 benefits coverage.

19 B. When performing a utilization review for a
20 request for coverage of prosthetic ~~[or]~~ device, custom orthotic
21 device, wheelchair or activity chair benefits, an insurer shall
22 apply the most recent version of evidence-based treatment and
23 fit criteria as recognized by relevant clinical specialists or
24 their organizations. Such standards may be named by the
25 superintendent in rule.

1 C. An insurer shall render utilization review
2 determinations in a nondiscriminatory manner and shall not deny
3 coverage for habilitative or rehabilitative benefits, including
4 ~~[prosthetics or orthotics]~~ prosthetic devices, custom orthotic
5 devices, wheelchairs or activity chairs, solely based on an
6 insured's actual or perceived disability.

7 D. An insurer shall not deny a prosthetic ~~[or]~~
8 device, a custom orthotic device, a wheelchair or an activity
9 chair benefit ~~[for an individual with limb loss or absence]~~
10 that would otherwise be covered for a non-disabled person
11 seeking medical or surgical intervention to restore or maintain
12 the ability to perform the same physical activity if the item
13 is for a person with documented permanent physical conditions,
14 including limb loss, limb absence, limb difference, paralysis
15 or neuromuscular or musculoskeletal conditions, that
16 significantly limit the person's ability to independently and
17 safely ambulate, stand, perform functional mobility or engage
18 in physical activity necessary for whole-body health.

19 E. A health benefits plan that is delivered, issued
20 for delivery or renewed in this state that offers coverage for
21 ~~[prosthetics and]~~ prosthetic devices, custom orthotic devices,
22 wheelchairs or activity chairs shall include language
23 describing an insured's rights pursuant to Subsections C and D
24 of this section in its evidence of coverage and any benefit
25 denial letters.

1 F. Prosthetic ~~[and]~~ device, custom orthotic device,
2 wheelchair or activity chair coverage shall not be subject to
3 separate financial requirements that are applicable only with
4 respect to that coverage. A group health plan may impose cost
5 sharing on prosthetic ~~[or]~~ devices, custom orthotic devices,
6 wheelchairs or activity chairs; provided that any cost-sharing
7 requirements shall not be more restrictive than the cost-
8 sharing requirements applicable to the plan's coverage for
9 inpatient physician and surgical services.

10 G. A group health plan that provides coverage for
11 ~~[prosthetic or orthotic]~~ services related to prosthetic
12 devices, custom orthotic devices, wheelchairs or activity
13 chairs shall ensure access to medically necessary clinical care
14 and to prosthetic ~~[and]~~ devices, custom orthotic devices,
15 wheelchairs, activity chairs and technology from not less than
16 two distinct prosthetic ~~[and]~~ device, custom orthotic device,
17 wheelchair or activity chair providers in the managed care
18 plan's provider network located in the state. In the event
19 that medically necessary covered ~~[orthotics and prosthetics]~~
20 prosthetic devices, custom orthotic devices, wheelchairs or
21 activity chairs are not available from an in-network provider,
22 the insurer shall provide processes to refer a member to an
23 out-of-network provider and shall fully reimburse the out-of-
24 network provider at a mutually agreed upon rate less member
25 cost sharing determined on an in-network basis.

1 H. If coverage for prosthetic ~~[or]~~ devices, custom
2 orthotic devices, wheelchairs or activity chairs is provided,
3 payment shall be made for the replacement of a prosthetic ~~[or]~~
4 device, a custom orthotic device, a wheelchair or an activity
5 chair or for the replacement of any part of such ~~[devices]~~
6 items, without regard to continuous use or useful lifetime
7 restrictions, if an ordering health care provider determines
8 that the provision of a replacement ~~[device]~~ item, or a
9 replacement part of such ~~[a device]~~ an item, is necessary
10 because of any of the following:

11 (1) a change in the physiological condition of
12 the patient;

13 (2) an irreparable change in the condition of
14 the ~~[device]~~ item or in a part of the ~~[device]~~ item; or

15 (3) the condition of the ~~[device]~~ item or the
16 part of the ~~[device]~~ item requires repairs, and the cost of
17 such repairs would be more than sixty percent of the cost of a
18 replacement ~~[device]~~ item or of the part being replaced.

19 I. Confirmation from a prescribing health care
20 provider may be required if the prosthetic ~~[or]~~ device, custom
21 orthotic device, wheelchair or activity chair or part being
22 replaced is less than three years old.

23 J. The provisions of this section do not apply to
24 excepted benefits plans subject to the Short-Term Health Plan
25 and Excepted Benefit Act.

1 K. For the purposes of this section, "activity
2 chair" means a device that is designed specifically to enable a
3 person with mobility impairment to participate in physical
4 activities by providing better speed, safety, stability,
5 maneuverability and balance than a standard wheelchair that is
6 designed for activities of daily living."

7 SECTION 5. Section 59A-46-72 NMSA 1978 (being Laws 2023,
8 Chapter 196, Section 5) is amended to read:

9 "59A-46-72. MEDICAL NECESSITY AND NONDISCRIMINATION
10 STANDARDS FOR COVERAGE OF ~~[PROSTHETICS AND ORTHOTICS]~~
11 PROSTHETIC DEVICES, CUSTOM ORTHOTIC DEVICES, WHEELCHAIRS OR
12 ACTIVITY CHAIRS.--

13 A. An individual or group health maintenance
14 organization contract that is delivered, issued for delivery or
15 renewed in this state that covers essential health benefits and
16 covers prosthetic ~~[and]~~ devices, custom orthotic devices,
17 wheelchairs or activity chairs shall consider these benefits
18 habilitative or rehabilitative benefits for purposes of state
19 or federal requirements on essential health benefits coverage.

20 B. When performing a utilization review for a
21 request for coverage of prosthetic ~~[or]~~ device, custom orthotic
22 device, wheelchair or activity chair benefits, an insurer shall
23 apply the most recent version of evidence-based treatment and
24 fit criteria as recognized by relevant clinical specialists or
25 their organizations. Such standards may be named by the

1 superintendent in rule.

2 C. An insurer shall render utilization review
3 determinations in a nondiscriminatory manner and shall not deny
4 coverage for habilitative or rehabilitative benefits, including
5 ~~[prosthetics or orthotics]~~ prosthetic devices, custom orthotic
6 devices, wheelchairs or activity chairs, solely based on an
7 insured's actual or perceived disability.

8 D. An insurer shall not deny a prosthetic ~~[or]~~
9 device, a custom orthotic device, a wheelchair or an activity
10 chair benefit ~~[for an individual with limb loss or absence]~~
11 that would otherwise be covered for a non-disabled person
12 seeking medical or surgical intervention to restore or maintain
13 the ability to perform the same physical activity if the item
14 is for a person with documented permanent physical conditions,
15 including limb loss, limb absence, limb difference, paralysis
16 or neuromuscular or musculoskeletal conditions, that
17 significantly limit the person's ability to independently and
18 safely ambulate, stand, perform functional mobility or engage
19 in physical activity necessary for whole-body health.

20 E. A health benefits plan that is delivered, issued
21 for delivery or renewed in this state that offers coverage for
22 ~~[prosthetics and]~~ prosthetic devices, custom orthotic devices,
23 wheelchairs or activity chairs shall include language
24 describing an insured's rights pursuant to Subsections C and D
25 of this section in its evidence of coverage and any benefit

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1 denial letters.

2 F. Prosthetic ~~[and]~~ device, custom orthotic device,
3 wheelchair or activity chair coverage shall not be subject to
4 separate financial requirements that are applicable only with
5 respect to that coverage. An individual or group health plan
6 may impose cost sharing on prosthetic ~~[or]~~ devices, custom
7 orthotic devices, wheelchairs or activity chairs; provided that
8 any cost-sharing requirements shall not be more restrictive
9 than the cost-sharing requirements applicable to the plan's
10 coverage for inpatient physician and surgical services.

11 G. An individual or group health plan that provides
12 coverage for ~~[prosthetic or orthotic]~~ services related to
13 prosthetic devices, custom orthotic devices, wheelchairs or
14 activity chairs shall ensure access to medically necessary
15 clinical care and to prosthetic ~~[and]~~ devices, custom orthotic
16 devices, wheelchairs, activity chairs and technology from not
17 less than two distinct prosthetic ~~[and]~~ device, custom orthotic
18 device, wheelchair or activity chair providers in the managed
19 care plan's provider network located in the state. In the
20 event that medically necessary covered ~~[orthotics and~~
21 ~~prosthetics]~~ prosthetic devices, custom orthotic devices,
22 wheelchairs or activity chairs are not available from an in-
23 network provider, the insurer shall provide processes to refer
24 a member to an out-of-network provider and shall fully
25 reimburse the out-of-network provider at a mutually agreed upon

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1 rate less member cost sharing determined on an in-network
2 basis.

3 H. If coverage for prosthetic ~~[or]~~ devices, custom
4 orthotic devices, wheelchairs or activity chairs is provided,
5 payment shall be made for the replacement of a prosthetic ~~[or]~~
6 device, a custom orthotic device, a wheelchair or an activity
7 chair or for the replacement of any part of such ~~[devices]~~
8 items, without regard to continuous use or useful lifetime
9 restrictions, if an ordering health care provider determines
10 that the provision of a replacement ~~[device]~~ item, or a
11 replacement part of such ~~[a device]~~ an item, is necessary
12 because of any of the following:

13 (1) a change in the physiological condition of
14 the patient;

15 (2) an irreparable change in the condition of
16 the ~~[device]~~ item or in a part of the ~~[device]~~ item; or

17 (3) the condition of the ~~[device]~~ item or the
18 part of the ~~[device]~~ item requires repairs, and the cost of
19 such repairs would be more than sixty percent of the cost of a
20 replacement ~~[device]~~ item or of the part being replaced.

21 I. Confirmation from a prescribing health care
22 provider may be required if the prosthetic ~~[or]~~ device, custom
23 orthotic device, wheelchair or activity chair or part being
24 replaced is less than three years old.

25 J. The provisions of this section do not apply to

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1 excepted benefits plans subject to the Short-Term Health Plan
2 and Excepted Benefit Act.

3 K. For the purposes of this section, "activity
4 chair" means a device that is designed specifically to enable a
5 person with mobility impairment to participate in physical
6 activities by providing better speed, safety, stability,
7 maneuverability and balance than a standard wheelchair that is
8 designed for activities of daily living."

9 **SECTION 6.** Section 59A-47-66 NMSA 1978 (being Laws 2023,
10 Chapter 196, Section 6) is amended to read:

11 "59A-47-66. MEDICAL NECESSITY AND NONDISCRIMINATION
12 STANDARDS FOR COVERAGE OF ~~[PROSTHETICS AND ORTHOTICS]~~
13 PROSTHETIC DEVICES, CUSTOM ORTHOTIC DEVICES, WHEELCHAIRS OR
14 ACTIVITY CHAIRS.--

15 A. An individual or group health care plan that is
16 delivered, issued for delivery or renewed in this state that
17 covers essential health benefits and covers prosthetic ~~[and]~~
18 devices, custom orthotic devices, wheelchairs or activity
19 chairs shall consider these benefits habilitative or
20 rehabilitative benefits for purposes of state or federal
21 requirements on essential health benefits coverage.

22 B. When performing a utilization review for a
23 request for coverage of prosthetic ~~[or]~~ device, custom orthotic
24 device, wheelchair or activity chair benefits, an insurer shall
25 apply the most recent version of evidence-based treatment and

1 fit criteria as recognized by relevant clinical specialists or
2 their organizations. Such standards may be named by the
3 superintendent in rule.

4 C. An insurer shall render utilization review
5 determinations in a nondiscriminatory manner and shall not deny
6 coverage for habilitative or rehabilitative benefits, including
7 ~~[prosthetics or orthotics]~~ prosthetic devices, custom orthotic
8 devices, wheelchairs or activity chairs, solely based on an
9 insured's actual or perceived disability.

10 D. An insurer shall not deny a prosthetic ~~[or]~~
11 device, a custom orthotic device, a wheelchair or an activity
12 chair benefit ~~[for an individual with limb loss, or absence]~~
13 that would otherwise be covered for a non-disabled person
14 seeking medical or surgical intervention to restore or maintain
15 the ability to perform the same physical activity if the item
16 is for a person with documented permanent physical conditions,
17 including limb loss, limb absence, limb difference, paralysis
18 or neuromuscular or musculoskeletal conditions, that
19 significantly limit the person's ability to independently and
20 safely ambulate, stand, perform functional mobility or engage
21 in physical activity necessary for whole-body health.

22 E. A health benefits plan that is delivered, issued
23 for delivery or renewed in this state that offers coverage for
24 ~~[prosthetics and]~~ prosthetic devices, custom orthotic devices,
25 wheelchairs or activity chairs shall include language

1 describing an insured's rights pursuant to Subsections C and D
2 of this section in its evidence of coverage and any benefit
3 denial letters.

4 F. Prosthetic ~~[and]~~ device, custom orthotic device,
5 wheelchair or activity chair coverage shall not be subject to
6 separate financial requirements that are applicable only with
7 respect to that coverage. An individual or group health care
8 plan may impose cost sharing on prosthetic ~~[or]~~ devices, custom
9 orthotic devices, wheelchairs or activity chairs; provided that
10 any cost-sharing requirements shall not be more restrictive
11 than the cost-sharing requirements applicable to the plan's
12 coverage for inpatient physician and surgical services.

13 G. An individual or group health plan that provides
14 coverage for ~~[prosthetic or orthotic]~~ services related to
15 prosthetic devices, custom orthotic devices, wheelchairs or
16 activity chairs shall ensure access to medically necessary
17 clinical care and to prosthetic ~~[and]~~ devices, custom orthotic
18 devices, wheelchairs or activity chairs and technology from not
19 less than two distinct prosthetic ~~[and]~~ device, custom orthotic
20 device, wheelchair or activity chair providers in the managed
21 care plan's provider network located in the state. In the
22 event that medically necessary covered ~~[orthotics and~~
23 ~~prosthetics]~~ prosthetic devices, custom orthotic devices,
24 wheelchairs or activity chairs are not available from an in-
25 network provider, the insurer shall provide processes to refer

1 a member to an out-of-network provider and shall fully
2 reimburse the out-of-network provider at a mutually agreed upon
3 rate less member cost sharing determined on an in-network
4 basis.

5 H. If coverage for prosthetic ~~[or]~~ devices, custom
6 orthotic devices, wheelchairs or activity chairs is provided,
7 payment shall be made for the replacement of a prosthetic ~~[or]~~
8 device, a custom orthotic device, a wheelchair or an activity
9 chair or for the replacement of any part of such ~~[devices]~~
10 items, without regard to continuous use or useful lifetime
11 restrictions, if an ordering health care provider determines
12 that the provision of a replacement ~~[device]~~ item, or a
13 replacement part of such ~~[a device]~~ an item, is necessary
14 because of any of the following:

15 (1) a change in the physiological condition of
16 the patient;

17 (2) an irreparable change in the condition of
18 the ~~[device]~~ item or in a part of the ~~[device]~~ item; or

19 (3) the condition of the ~~[device]~~ item or the
20 part of the ~~[device]~~ item requires repairs, and the cost of
21 such repairs would be more than sixty percent of the cost of a
22 replacement ~~[device]~~ item or of the part being replaced.

23 I. Confirmation from a prescribing health care
24 provider may be required if the prosthetic ~~[or]~~ device, custom
25 orthotic device, wheelchair or activity chair or part being

replaced is less than three years old.

J. The provisions of this section do not apply to excepted benefits plans subject to the Short-Term Health Plan and Excepted Benefit Act.

K. For the purposes of this section, "activity chair" means a device that is designed specifically to enable a person with mobility impairment to participate in physical activities by providing better speed, safety, stability, maneuverability and balance than a standard wheelchair that is designed for activities of daily living."

SECTION 7. APPLICABILITY.--The provisions of this act apply to policies, plans, contracts and certificates delivered or issued for delivery or renewed, extended or amended in this state on or after January 1, 2027.