

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]

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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  
.232256.6

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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

.232256.6

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

.232256.6

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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 [or] 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

.232256.6

underscored material = new  
[bracketed material] = delete

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;

.232256.6

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

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

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

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

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

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

C. An insurer shall render utilization review

underscored material = new  
[bracketed material] = delete

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,  
.232256.6

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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  
.232256.6

underscored material = new  
[bracketed material] = delete

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.

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

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

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

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

G. A group health plan that provides coverage for

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

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

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

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

I. Confirmation from a prescribing health care provider may be required if the prosthetic [ər] device, custom 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.

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

.232256.6

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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 [devicees]  
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

.232256.6

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

.232256.6

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

.232256.6

underscored material = new  
[bracketed material] = delete

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

1 replaced is less than three years old.

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

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

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

15                  - 26 -

underscored material = new  
[bracketed material] = delete

25 .232256.6