

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 38

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

## AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE HEALTH CARE PURCHASING ACT AND THE NEW MEXICO INSURANCE CODE TO REQUIRE COVERAGE FOR COMPLEX REHABILITATION TECHNOLOGY DEVICES; PROVIDING THAT DENIAL OF A COMPLEX REHABILITATION TECHNOLOGY DEVICE 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--  
COMPLEX REHABILITATION TECHNOLOGY DEVICES--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 ~~and complex rehabilitation technology devices~~ that is at least  
3 equivalent to that coverage currently provided by the federal  
4 medicare program and no less favorable than the terms and  
5 conditions that the group health plan offers for medical and  
6 surgical benefits. Covered benefits shall be provided for more  
7 than one prosthetic device, custom orthotic device or complex  
8 rehabilitation technology device when medically necessary, but  
9 shall include no more than three prosthetic devices or custom  
10 orthotic devices per affected limb per covered person and no  
11 more than two complex rehabilitation technology devices per  
12 covered person during any three-year period. [B.] A group  
13 health plan shall cover:

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

25 [+] (a) formulation of its design,

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

3 [+] (b) all materials and components  
4 necessary to use it;

5 [+] (c) instructing the enrollee in  
6 the use of it; and

7 [+] (d) the repair and replacement of  
8 it;

9 (2) [e. ~~A group heath plan shall cover~~] a  
10 prosthetic ~~[or]~~ device, a custom orthotic device or a complex  
11 rehabilitation technology device determined by the enrollee's  
12 provider to be the most appropriate model that meets the  
13 medical needs of the enrollee for performing physical  
14 activities, including running, biking and swimming, and to  
15 maximize the enrollee's upper limb function. This coverage  
16 shall include all services and supplies necessary for the  
17 effective use of a prosthetic ~~[or]~~ device, a custom orthotic  
18 device or a complex rehabilitation technology device,  
19 including:

20 [+] (a) formulation of its design,  
21 fabrication, material and component selection, measurements,  
22 fittings and static and dynamic alignments;

23 [+] (b) all materials and components  
24 necessary to use it;

25 [+] (c) instructing the enrollee in

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1 the use of it; and

2 [4] (d) the repair and replacement of  
3 it; and

4 (3) a prosthetic device, custom orthotic  
5 device or complex rehabilitation technology device determined  
6 by the enrollee's prosthetic or orthotic care provider or  
7 complex rehabilitation technology device accredited supplier to  
8 be the most appropriate prosthetic device, custom orthotic  
9 device or complex rehabilitation technology device that meets  
10 the medical needs of the enrollee for purposes of showering or  
11 bathing.

12 [D.] B. A group health plan's reimbursement rate  
13 for prosthetic [and] devices, custom orthotic devices or  
14 complex rehabilitation technology devices shall be at least  
15 equivalent to that currently provided by the federal medicare  
16 program and no more restrictive than other coverage under the  
17 group health plan.

18 [E.] C. Prosthetic [and] device, custom orthotic  
19 device or complex rehabilitation technology device coverage  
20 shall be comparable to coverage for other medical and surgical  
21 benefits under the group health plan, including restorative  
22 internal devices such as internal prosthetic devices, and shall  
23 not be subject to spending limits or lifetime restrictions.

24 [F.] D. Prosthetic [and] device, custom orthotic  
25 device or complex rehabilitation technology device coverage

1 shall not be subject to separate financial requirements that  
2 are applicable only with respect to that coverage. A group  
3 health plan may impose cost sharing on prosthetic [or] devices,  
4 custom orthotic devices or complex rehabilitation technology  
5 devices; provided that any cost-sharing requirements shall not  
6 be more restrictive than the cost-sharing requirements  
7 applicable to the plan's medical and surgical benefits,  
8 including those for internal devices.

9 [G.] E. A group health plan may limit the coverage  
10 for, or alter the cost-sharing requirements for, out-of-network  
11 coverage of prosthetic [and] devices, custom orthotic devices  
12 or complex rehabilitation technology devices; provided that the  
13 restrictions and cost-sharing requirements applicable to  
14 prosthetic [or] devices, custom orthotic devices or complex  
15 rehabilitation technology devices shall not be more restrictive  
16 than the restrictions and requirements applicable to the out-  
17 of-network coverage for a group health plan's medical and  
18 surgical coverage.

19 [H.] F. In the event that medically necessary  
20 covered ~~[orthotics and prosthetics]~~ prosthetic devices, custom  
21 orthotic devices or complex rehabilitation technology devices  
22 are not available from an in-network provider, the insurer  
23 shall provide processes to refer a member to an out-of-network  
24 provider and shall fully reimburse the out-of-network provider  
25 at a mutually agreed upon rate less member cost sharing

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1       determined on an in-network basis.

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

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

16            [~~K.~~] I. Coverage for prosthetic [~~and~~] devices,  
17       custom orthotic devices or complex rehabilitation technology  
18       devices shall be considered habilitative or rehabilitative  
19       benefits for purposes of any state or federal requirement for  
20       coverage of essential health benefits, including habilitative  
21       and rehabilitative benefits.

22            [~~L.~~] J. If coverage for prosthetic [or] devices,  
23       custom orthotic devices or complex rehabilitation technology  
24       devices is provided, payment shall be made for the replacement  
25       of a prosthetic [or] device, a custom orthotic device or a

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1       complex rehabilitation technology device or for the replacement  
2       of any part of such devices, without regard to continuous use  
3       or useful lifetime restrictions, if an ordering health care  
4       provider determines that the provision of a replacement device,  
5       or a replacement part of such a device, is necessary because of  
6       any of the following:

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

9               (2) an irreparable change in the condition of  
10      the device or in a part of the device; or

11               (3) the condition of the device or the part of  
12      the device requires repairs, and the cost of such repairs would  
13      be more than sixty percent of the cost of a replacement device  
14      or of the part being replaced.

15               K. Coverage for complex rehabilitation technology  
16      devices shall be based on an enrollee's specific medical,  
17      physical, functional and environmental needs and capacities to  
18      engage in normal life activities and shall allow an enrollee to  
19      obtain more than one complex rehabilitation technology device,  
20      but no more than two complex rehabilitation technology devices  
21      per covered person during any three-year period. A group  
22      health plan shall cover complex rehabilitation technology  
23      devices:

24               (1) for daily use that meets the enrollee's  
25      mobility and positioning needs; or

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(2) to enable the enrollee to participate in physical activities necessary to achieve or maintain health and support functional independence.

L. A complex rehabilitation technology device that is a manual or power wheelchair shall only be covered pursuant to this section if the:

(1) enrollee has undergone a complex rehabilitation technology device evaluation conducted by a licensed physical therapist or occupational therapist who has no financial relationship with the supplier of the complex rehabilitation technology device; and

(2) complex rehabilitation technology device  
is provided by a complex rehabilitation technology device  
supplier that:

(a) employs at least one assistive technology professional certified by the rehabilitation engineering and assistive technology society of North America who specialized in seating, positioning and mobility and has direct, in-person involvement in the wheelchair selection for the enrollee; and

(b) makes at least one qualified complex rehabilitation technology device service technician available in each service area served by the supplier to service and repair devices that are furnished by the supplier.

#### M. Confirmation from a prescribing health care

1 provider may be required if the prosthetic [or] device, custom  
2 orthotic device or complex rehabilitation technology device or  
3 part being replaced is less than three years old.

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

7 O. For the purposes of this section, "complex  
8 rehabilitation technology device" means a subset of durable  
9 medical equipment that:

10 (1) consists of complex rehabilitation manual  
11 and power wheelchairs and mobility devices, including  
12 specialized seating and positioning items, options and  
13 accessories;

14 (2) is designed, manufactured, configured,  
15 adjusted or modified for a specific person to meet that  
16 person's unique medical, physical, functional and environmental  
17 needs and capacities;

18 (3) is generally not useful to a person in the  
19 absence of a disability, illness, injury or other medical  
20 condition; and

21 (4) requires specialized services to ensure  
22 appropriate use of the item, including:

23 (a) an evaluation of the features and  
24 functions necessary to assist the person who will use the  
25 device; or

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(b) configuring, fitting, programming, adjusting or adapting the particular device for use by a person."

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

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

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

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

(2) denying a prosthetic [or] device, a custom orthotic device or a complex rehabilitation technology device benefit for [an individual with limb loss or absence] a person with limb loss, limb absence or mobility limitation 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;

(3) failure to apply the most recent version of treatment and fit criteria developed by the professional association with the most relevant clinical specialty when performing a utilization review for a request for coverage of prosthetic [or] device, custom orthotic device or complex

rehabilitation technology device benefits; and

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

B. For purposes of this section:

(1) "complex rehabilitation technology device"  
means a subset of durable medical equipment that:

(a) consists of complex rehabilitation manual and power wheelchairs and mobility devices, including specialized seating and positioning items, options and accessories;

(b) is designed, manufactured,  
configured, adjusted or modified for a specific person to meet  
that person's unique medical, physical, functional and  
environmental needs and capacities;

(c) is generally not useful to a person in the absence of a disability, illness, injury or other medical condition; and

(d) requires specialized services to ensure appropriate use of the item, including: 1) an evaluation of the features and functions necessary to assist the person who will use the device; or 2) configuring, fitting, programming, adjusting or adapting the particular device for

use by a person; and

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

[] (a) an accident-only policy;

[~~(2)~~] (b) a credit-only policy;

[+3] (c) a long- or short-term care or  
icy;

disability income policy;

[44] (d) a specified disease policy;

[~~(e)~~] (e) coverage provided pursuant to  
al Social Security Act, as amended;

Title 18 of the federal Social Security Act, as amended;

[~~(6)~~] (f) coverage provided pursuant to  
al Social Security Act and the Public

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

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

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

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

[~~(11)~~] (k) a workers' compensation

policy;

[~~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 OR COMPLEX REHABILITATION  
TECHNOLOGY DEVICES.--

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 or complex rehabilitation technology devices shall consider these benefits habitative 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 or complex rehabilitation technology device 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

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 or complex rehabilitation technology devices, solely on  
5 the basis of an insured's actual or perceived disability.

6 D. An insurer shall not deny a prosthetic ~~[or]~~  
7 device, a custom orthotic device or a complex rehabilitation  
8 technology device benefit for ~~[an individual with limb loss or~~  
9 ~~absence]~~ a person with limb loss, limb absence or mobility  
10 limitation that would otherwise be covered for a non-disabled  
11 person seeking medical or surgical intervention to restore or  
12 maintain the ability to perform the same physical activity.

13 E. ~~[A]~~ An individual health ~~[benefits]~~ plan that is  
14 delivered, issued for delivery or renewed in this state that  
15 offers coverage for ~~[prosthetics and]~~ prosthetic devices,  
16 custom orthotic devices or complex rehabilitation technology  
17 devices shall include language describing an insured's rights  
18 pursuant to Subsections C and D of this section in its evidence  
19 of coverage and any benefit denial letters.

20 F. Prosthetic ~~[and]~~ device, custom orthotic device  
21 or complex rehabilitation technology device coverage shall not  
22 be subject to separate financial requirements that are  
23 applicable only with respect to that coverage. An individual  
24 health plan may impose cost sharing on prosthetic ~~[or]~~ devices,  
25 custom orthotic devices or complex rehabilitation technology

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1       devices; provided that any cost-sharing requirements shall not  
2       be more restrictive than the cost-sharing requirements  
3       applicable to the plan's coverage for inpatient physician and  
4       surgical services.

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

23               H. If coverage for prosthetic ~~[or]~~ devices, custom  
24       orthotic devices or complex rehabilitation technology devices  
25       is provided, payment shall be made for the replacement of a

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1 prosthetic [or] device, a custom orthotic device or a complex  
2 rehabilitation technology device or for the replacement of any  
3 part of such devices, without regard to continuous use or  
4 useful lifetime restrictions, if an ordering health care  
5 provider determines that the provision of a replacement device,  
6 or a replacement part of such a device, is necessary because of  
7 any of the following:

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

10 (2) an irreparable change in the condition of  
11 the device or in a part of the device; or

12 (3) the condition of the device or the part of  
13 the device requires repairs, and the cost of such repairs would  
14 be more than sixty percent of the cost of a replacement device  
15 or of the part being replaced.

16 I. Covered benefits for prosthetic devices and  
17 custom orthotic devices shall provide for more than one  
18 prosthetic device or custom orthotic device when medically  
19 necessary, but shall include no more than three prosthetic  
20 devices or custom orthotic devices per affected limb per  
21 covered person during any three-year period. An individual  
22 health plan shall cover:

23 (1) the most appropriate prosthetic device or  
24 custom orthotic device determined to be medically necessary by  
25 the insured's treating physician and associated medical

providers to restore or maintain the ability to complete activities of daily living or essential job-related activities.  
This coverage shall include all services and supplies necessary for the effective use of a prosthetic device or a custom orthotic device, including:

(a) formulation of the device's design, fabrication, material and component selection, measurements, fittings and static and dynamic alignments;

(b) all materials and components

(c) instructing the insured in the use of the device; and

(d) the repair and replacement of the device;

(2) a prosthetic device or a custom orthotic device determined by the insured's provider to be the most appropriate model that meets the medical needs of the insured for performing physical activities, including running, biking and swimming, and to maximize the insured's upper limb function. This coverage shall include all services and supplies necessary for the effective use of a prosthetic device or a custom orthotic device, including:

(a) formulation of the device's design, fabrication, material and component selection, measurements, fittings and static and dynamic alignments;

(b) all materials and components

(c) instructing the insured in the use of the device; and

(d) the repair and replacement of the device; and

(3) a prosthetic device or custom orthotic device determined by the insured's prosthetic or orthotic care provider to be the most appropriate prosthetic device or custom orthotic device that meets the medical needs of the insured for purposes of showering or bathing.

J. Coverage for complex rehabilitation technology  
devices shall be based on an insured's specific medical, physical, functional and environmental needs and capacities to engage in normal life activities and shall allow an insured to obtain more than one complex rehabilitation technology device, but no more than two complex rehabilitation technology devices per covered person during any three-year period. An individual health plan shall cover complex rehabilitation technology devices:

(1) for daily use that meets the insured's mobility and positioning needs; or

(2) to enable the insured to participate in physical activities necessary to achieve or maintain health and support functional independence.

1                   K. A complex rehabilitation technology device that  
2                   is a manual or power wheelchair shall only be covered pursuant  
3                   to this section if the:

4                   (1) insured has undergone a complex  
5                   rehabilitation technology device evaluation conducted by a  
6                   licensed physical therapist or occupational therapist who has  
7                   no financial relationship with the supplier of the complex  
8                   rehabilitation technology device; and

9                   (2) complex rehabilitation technology device  
10                  is provided by a complex rehabilitation technology device  
11                  supplier that:

12                  (a) employs at least one assistive  
13                  technology professional certified by the rehabilitation  
14                  engineering and assistive technology society of North America  
15                  who specialized in seating, positioning and mobility and has  
16                  direct, in-person involvement in the wheelchair selection for  
17                  the insured; and

18                  (b) makes at least one qualified complex  
19                  rehabilitation technology device service technician available  
20                  in each service area served by the supplier to service and  
21                  repair devices that are furnished by the supplier.

22                  [~~I.~~] L. Confirmation from a prescribing health care  
23                  provider may be required if the prosthetic [~~or~~] device, custom  
24                  orthotic device or complex rehabilitation technology device or  
25                  part being replaced is less than three years old.

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[bracketed material] = delete

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

4 N. For the purposes of this section, "complex  
5 rehabilitation technology device" means a subset of durable  
6 medical equipment that:

7 (1) consists of complex rehabilitation manual  
8 and power wheelchairs and mobility devices, including  
9 specialized seating and positioning items, options and  
10 accessories;

11 (2) is designed, manufactured, configured,  
12 adjusted or modified for a specific person to meet that  
13 person's unique medical, physical, functional and environmental  
14 needs and capacities;

15 (3) is generally not useful to a person in the  
16 absence of a disability, illness, injury or other medical  
17 condition; and

18 (4) requires specialized services to ensure  
19 appropriate use of the item, including:

20 (a) an evaluation of the features and  
21 functions necessary to assist the person who will use the  
22 device; or

23 (b) configuring, fitting, programming,  
24 adjusting or adapting the particular device for use by a  
25 person."

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

3           "59A-23-32. MEDICAL NECESSITY AND NONDISCRIMINATION  
4 STANDARDS FOR COVERAGE OF ~~PROSTHETICS AND ORTHOTICS~~  
5 PROSTHETIC DEVICES, CUSTOM ORTHOTIC DEVICES OR COMPLEX  
6 REHABILITATION TECHNOLOGY DEVICES.--

7           A. A group health plan that is delivered, issued  
8 for delivery or renewed in this state that covers essential  
9 health benefits or covers prosthetic ~~and~~ devices, custom  
10 orthotic devices or complex rehabilitation technology devices  
11 shall consider these benefits habilitative or rehabilitative  
12 benefits for purposes of state or federal requirements on  
13 essential health benefits coverage.

14           B. When performing a utilization review for a  
15 request for coverage of prosthetic ~~or~~ device, custom orthotic  
16 device or complex rehabilitation technology device benefits, an  
17 insurer shall apply the most recent version of evidence-based  
18 treatment and fit criteria as recognized by relevant clinical  
19 specialists or their organizations. Such standards may be  
20 named by the superintendent in rule.

21           C. An insurer shall render utilization review  
22 determinations in a nondiscriminatory manner and shall not deny  
23 coverage for habilitative or rehabilitative benefits, including  
24 ~~prosthetics or orthotics~~ prosthetic devices, custom orthotic  
25 devices or complex rehabilitation technology devices, solely

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1 based on an insured's actual or perceived disability.

2           D. An insurer shall not deny a prosthetic [or]  
3 device, a custom orthotic device or a complex rehabilitation  
4 technology device benefit for [an individual with limb loss or  
5 absence] a person with limb loss, limb absence or mobility  
6 limitation that would otherwise be covered for a non-disabled  
7 person seeking medical or surgical intervention to restore or  
8 maintain the ability to perform the same physical activity.

9           E. A group health [benefits] plan that is  
10 delivered, issued for delivery or renewed in this state that  
11 offers coverage for [prosthetics and] prosthetic devices,  
12 custom orthotic devices or complex rehabilitation technology  
13 devices shall include language describing an insured's rights  
14 pursuant to Subsections C and D of this section in its evidence  
15 of coverage and any benefit denial letters.

16           F. Prosthetic [and] device, custom orthotic device  
17 or complex rehabilitation technology device coverage shall not  
18 be subject to separate financial requirements that are  
19 applicable only with respect to that coverage. A group health  
20 plan may impose cost sharing on prosthetic [or] devices, custom  
21 orthotic devices or complex rehabilitation technology devices;  
22 provided that any cost-sharing requirements shall not be more  
23 restrictive than the cost-sharing requirements applicable to  
24 the plan's coverage for inpatient physician and surgical  
25 services.

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[bracketed material] = delete



1 provider determines that the provision of a replacement device,  
2 or a replacement part of such a device, is necessary because of  
3 any of the following:

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

6 (2) an irreparable change in the condition of  
7 the device or in a part of the device; or

8 (3) the condition of the device or the part of  
9 the device requires repairs, and the cost of such repairs would  
10 be more than sixty percent of the cost of a replacement device  
11 or of the part being replaced.

12 I. Covered benefits for prosthetic devices and  
13 custom orthotic devices shall provide for more than one  
14 prosthetic device or custom orthotic device when medically  
15 necessary, but shall include no more than three prosthetic  
16 devices or custom orthotic devices per affected limb per  
17 covered person during any three-year period. A group health  
18 plan shall cover:

19 (1) the most appropriate prosthetic device or  
20 custom orthotic device determined to be medically necessary by  
21 the insured's treating physician and associated medical  
22 providers to restore or maintain the ability to complete  
23 activities of daily living or essential job-related activities.  
24 This coverage shall include all services and supplies necessary  
25 for the effective use of a prosthetic device or a custom

1       orthotic device, including:

2               (a) formulation of the device's design,

3       fabrication, material and component selection, measurements,

4       fittings and static and dynamic alignments;

5               (b) all materials and components

6       necessary to use the device;

7               (c) instructing the insured in the use

8       of the device; and

9               (d) the repair and replacement of the

10       device;

11               (2) a prosthetic device or a custom orthotic

12       device determined by the insured's provider to be the most

13       appropriate model that meets the medical needs of the insured

14       for performing physical activities, including running, biking

15       and swimming, and to maximize the insured's upper limb

16       function. This coverage shall include all services and

17       supplies necessary for the effective use of a prosthetic device

18       or a custom orthotic device, including:

19               (a) formulation of the device's design,

20       fabrication, material and component selection, measurements,

21       fittings and static and dynamic alignments;

22               (b) all materials and components

23       necessary to use the device;

24               (c) instructing the insured in the use

25       of the device; and

.233748.4

(d) the repair and replacement of the device; and

(3) a prosthetic device or custom orthotic device determined by the insured's prosthetic or orthotic care provider to be the most appropriate prosthetic device or custom orthotic device that meets the medical needs of the insured for purposes of showering or bathing.

J. Coverage for complex rehabilitation technology  
devices shall be based on an insured's specific medical,  
physical, functional and environmental needs and capacities to  
engage in normal life activities and shall allow an insured to  
obtain more than one complex rehabilitation technology device,  
but no more than two complex rehabilitation technology devices  
per covered person during any three-year period. A group  
health plan shall cover complex rehabilitation technology  
devices:

(1) for daily use that meets the insured's mobility and positioning needs; or

(2) to enable the insured to participate in physical activities necessary to achieve or maintain health and support functional independence.

K. A complex rehabilitation technology device that is a manual or power wheelchair shall only be covered pursuant to this section if the:

(1) insured has undergone a complex

1       rehabilitation technology device evaluation conducted by a  
2       licensed physical therapist or occupational therapist who has  
3       no financial relationship with the supplier of the complex  
4       rehabilitation technology device; and

5               (2) complex rehabilitation technology device  
6       is provided by a complex rehabilitation technology device  
7       supplier that:

8                       (a) employs at least one assistive  
9       technology professional certified by the rehabilitation  
10      engineering and assistive technology society of North America  
11      who specialized in seating, positioning and mobility and has  
12      direct, in-person involvement in the wheelchair selection for  
13      the insured; and

14                       (b) makes at least one qualified complex  
15      rehabilitation technology device service technician available  
16      in each service area served by the supplier to service and  
17      repair devices that are furnished by the supplier.

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

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

25               N. For the purposes of this section, "complex

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1       rehabilitation technology device" means a subset of durable  
2       medical equipment that:

3               (1) consists of complex rehabilitation manual  
4       and power wheelchairs and mobility devices, including  
5       specialized seating and positioning items, options and  
6       accessories;

7               (2) is designed, manufactured, configured,  
8       adjusted or modified for a specific person to meet that  
9       person's unique medical, physical, functional and environmental  
10      needs and capacities;

11               (3) is generally not useful to a person in the  
12      absence of a disability, illness, injury or other medical  
13      condition; and

14               (4) requires specialized services to ensure  
15      appropriate use of the item, including:

16                       (a) an evaluation of the features and  
17      functions necessary to assist the person who will use the  
18      device; or

19                       (b) configuring, fitting, programming,  
20      adjusting or adapting the particular device for use by a  
21      person."

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

24                "59A-46-72. MEDICAL NECESSITY AND NONDISCRIMINATION  
25      STANDARDS FOR COVERAGE OF [PROSTHETICS AND ORTHOTICS]

.233748.4

1       PROSTHETIC DEVICES, CUSTOM ORTHOTIC DEVICES OR COMPLEX  
2       REHABILITATION TECHNOLOGY DEVICES.--

3           A. An individual or group health maintenance  
4 organization contract that is delivered, issued for delivery or  
5 renewed in this state that covers essential health benefits and  
6 covers prosthetic [and] devices, custom orthotic devices or  
7 complex rehabilitation technology devices shall consider these  
8 benefits rehabilitative or rehabilitative benefits for purposes  
9 of state or federal requirements on essential health benefits  
10 coverage.

11          B. When performing a utilization review for a  
12 request for coverage of prosthetic [or] device, custom orthotic  
13 device or complex rehabilitation technology device benefits,  
14 [an insurer] a health maintenance organization shall apply the  
15 most recent version of evidence-based treatment and fit  
16 criteria as recognized by relevant clinical specialists or  
17 their organizations. Such standards may be named by the  
18 superintendent in rule.

19          C. [An insurer] A health maintenance organization  
20 shall render utilization review determinations in a  
21 nondiscriminatory manner and shall not deny coverage for  
22 rehabilitative or rehabilitative benefits, including [prosthetics  
23 or orthotics] prosthetic devices, custom orthotic devices or  
24 complex rehabilitation technology devices, solely based on an  
25 [insured's] enrollee's actual or perceived disability.

underscored material = new  
[bracketed material] = delete

1                   D. [An insurer] A health maintenance organization  
2 shall not deny a prosthetic [or] device, a custom orthotic  
3 device a or complex rehabilitation technology device benefit  
4 for [an individual with limb loss or absence] a person with  
5 limb loss, limb absence or mobility limitation that would  
6 otherwise be covered for a non-disabled person seeking medical  
7 or surgical intervention to restore or maintain the ability to  
8 perform the same physical activity.

9                   E. [A health benefits plan] An individual or group  
10 health maintenance organization contract that is delivered,  
11 issued for delivery or renewed in this state that offers  
12 coverage for [prosthetics and] prosthetic devices, custom  
13 orthotic devices or complex rehabilitation technology devices  
14 shall include language describing an [insured's] enrollee's  
15 rights pursuant to Subsections C and D of this section in its  
16 evidence of coverage and any benefit denial letters.

17                   F. Prosthetic [and] device, custom orthotic device  
18 or complex rehabilitation technology device coverage shall not  
19 be subject to separate financial requirements that are  
20 applicable only with respect to that coverage. An individual  
21 or group health [plan] maintenance organization contract may  
22 impose cost sharing on prosthetic [or] devices, custom orthotic  
23 devices or complex rehabilitation technology devices; provided  
24 that any cost-sharing requirements shall not be more  
25 restrictive than the cost-sharing requirements applicable to

1 the plan's coverage for inpatient physician and surgical  
2 services.

3 G. An individual or group health [plan] maintenance  
4 organization contract that provides coverage for [prosthetic or  
5 ~~orthotic~~] services related to prosthetic devices, custom  
6 orthotic devices or complex rehabilitation technology devices  
7 shall ensure access to medically necessary clinical care and to  
8 prosthetic [and] devices, custom orthotic devices or complex  
9 rehabilitation technology devices and technology from not less  
10 than two distinct prosthetic [and] device, custom orthotic  
11 device or complex rehabilitation technology device providers in  
12 the managed care plan's provider network located in the state.  
13 In the event that medically necessary covered [orthotics and  
14 ~~prosthetics~~] prosthetic devices, custom orthotic devices or  
15 complex rehabilitation technology devices are not available  
16 from an in-network provider, the [insurer] health maintenance  
17 organization shall provide processes to refer [a member] an  
18 enrollee to an out-of-network provider and shall fully  
19 reimburse the out-of-network provider at a mutually agreed upon  
20 rate less [member] enrollee cost sharing determined on an in-  
21 network basis.

22 H. If coverage for prosthetic [or] devices, custom  
23 orthotic devices or complex rehabilitation technology devices  
24 is provided, payment shall be made for the replacement of a  
25 prosthetic [or] device, a custom orthotic device or a complex

underscored material = new  
[bracketed material] = delete

1       rehabilitation technology device or for the replacement of any  
2       part of such devices, without regard to continuous use or  
3       useful lifetime restrictions, if an ordering health care  
4       provider determines that the provision of a replacement device,  
5       or a replacement part of such a device, is necessary because of  
6       any of the following:

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

9               (2) an irreparable change in the condition of  
10      the device or in a part of the device; or

11               (3) the condition of the device or the part of  
12      the device requires repairs, and the cost of such repairs would  
13      be more than sixty percent of the cost of a replacement device  
14      or of the part being replaced.

15               I. Covered benefits for prosthetic devices and  
16       custom orthotic devices shall provide for more than one  
17       prosthetic device or custom orthotic device when medically  
18       necessary, but shall include no more than three prosthetic  
19       devices or custom orthotic devices per affected limb per  
20       covered person during any three-year period. An individual or  
21       group health maintenance organization contract shall cover:

22               (1) the most appropriate prosthetic device or  
23       custom orthotic device determined to be medically necessary by  
24       the enrollee's treating physician and associated medical  
25       providers to restore or maintain the ability to complete

1       activities of daily living or essential job-related activities.  
2       This coverage shall include all services and supplies necessary  
3       for the effective use of a prosthetic device or a custom  
4       orthotic device, including:

5                    (a) formulation of the device's design,  
6       fabrication, material and component selection, measurements,  
7       fittings and static and dynamic alignments;

8                    (b) all materials and components  
9       necessary to use the device;

10                   (c) instructing the enrollee in the use  
11       of the device; and

12                   (d) the repair and replacement of the  
13       device;

14                   (2) a prosthetic device or a custom orthotic  
15       device determined by the enrollee's provider to be the most  
16       appropriate model that meets the medical needs of the enrollee  
17       for performing physical activities, including running, biking  
18       and swimming, and to maximize the enrollee's upper limb  
19       function. This coverage shall include all services and  
20       supplies necessary for the effective use of a prosthetic device  
21       or a custom orthotic device, including:

22                   (a) formulation of the device's design,  
23       fabrication, material and component selection, measurements,  
24       fittings and static and dynamic alignments;

25                   (b) all materials and components

1        necessary to use the device;

2                    (c) instructing the enrollee in the use  
3        of the device; and

4                    (d) the repair and replacement of the  
5        device; and

6                    (3) a prosthetic device or custom orthotic  
7        device determined by the enrollee's prosthetic or orthotic care  
8        provider to be the most appropriate prosthetic device or custom  
9        orthotic device that meets the medical needs of the enrollee  
10      for purposes of showering or bathing.

11        J. Coverage for complex rehabilitation technology  
12      devices shall be based on an enrollee's specific medical,  
13      physical, functional and environmental needs and capacities to  
14      engage in normal life activities and shall allow an enrollee to  
15      obtain more than one complex rehabilitation technology device,  
16      but no more than two complex rehabilitation technology devices  
17      per covered person during any three-year period. An individual  
18      or group health maintenance organization contract shall cover  
19      complex rehabilitation technology devices:

20                    (1) for daily use that meets the enrollee's  
21      mobility and positioning needs; or

22                    (2) to enable the enrollee to participate in  
23      physical activities necessary to achieve or maintain health and  
24      support functional independence.

25        K. A complex rehabilitation technology device that

1       is a manual or power wheelchair shall only be covered pursuant  
2       to this section if the:

3               (1) enrollee has undergone a complex  
4       rehabilitation technology device evaluation conducted by a  
5       licensed physical therapist or occupational therapist who has  
6       no financial relationship with the supplier of the complex  
7       rehabilitation technology device; and

8               (2) complex rehabilitation technology device  
9       is provided by a complex rehabilitation technology device  
10       supplier that:

11               (a) employs at least one assistive  
12       technology professional certified by the rehabilitation  
13       engineering and assistive technology society of North America  
14       who specialized in seating, positioning and mobility and has  
15       direct, in-person involvement in the wheelchair selection for  
16       the enrollee; and

17               (b) makes at least one qualified complex  
18       rehabilitation technology device service technician available  
19       in each service area served by the supplier to service and  
20       repair devices that are furnished by the supplier.

21               [F.] L. Confirmation from a prescribing health care  
22       provider may be required if the prosthetic [or] device, custom  
23       orthotic device or complex rehabilitation technology device or  
24       part being replaced is less than three years old.

25               [J.] M. The provisions of this section do not apply

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

3 N. For the purposes of this section, "complex  
4 rehabilitation technology device" means a subset of durable  
5 medical equipment that:

6 (1) consists of complex rehabilitation manual  
7 and power wheelchairs and mobility devices, including  
8 specialized seating and positioning items, options and  
9 accessories;

10 (2) is designed, manufactured, configured,  
11 adjusted or modified for a specific person to meet that  
12 person's unique medical, physical, functional and environmental  
13 needs and capacities;

14 (3) is generally not useful to a person in the  
15 absence of a disability, illness, injury or other medical  
16 condition; and

17 (4) requires specialized services to ensure  
18 appropriate use of the item, including:

19 (a) an evaluation of the features and  
20 functions necessary to assist the person who will use the  
21 device; or

22 (b) configuring, fitting, programming,  
23 adjusting or adapting the particular device for use by a  
24 person."

25 SECTION 6. Section 59A-47-66 NMSA 1978 (being Laws 2023,  
.233748.4

underscored material = new  
[bracketed material] = delete

1 Chapter 196, Section 6) is amended to read:

2 "59A-47-66. MEDICAL NECESSITY AND NONDISCRIMINATION  
3 STANDARDS FOR COVERAGE OF ~~PROSTHETICS AND ORTHOTICS~~  
4 PROSTHETIC DEVICES, CUSTOM ORTHOTIC DEVICES OR COMPLEX  
5 REHABILITATION TECHNOLOGY DEVICES.--

6 A. An individual or group health care plan that is  
7 delivered, issued for delivery or renewed in this state that  
8 covers essential health benefits and covers prosthetic ~~and~~  
9 devices, custom orthotic devices or complex rehabilitation  
10 technology devices shall consider these benefits habilitative  
11 or rehabilitative benefits for purposes of state or federal  
12 requirements on essential health benefits coverage.

13 B. When performing a utilization review for a  
14 request for coverage of prosthetic ~~or~~ device, custom orthotic  
15 device or complex rehabilitation technology device benefits,  
16 ~~[an insurer]~~ a health care plan shall apply the most recent  
17 version of evidence-based treatment and fit criteria as  
18 recognized by relevant clinical specialists or their  
19 organizations. Such standards may be named by the  
20 superintendent in rule.

21 C. ~~[An insurer]~~ A health care plan shall render  
22 utilization review determinations in a nondiscriminatory manner  
23 and shall not deny coverage for habilitative or rehabilitative  
24 benefits, including ~~[prosthetics or orthotics]~~ prosthetic  
25 devices, custom orthotic devices or complex rehabilitation

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1 technology devices, solely based on [an insured's] a  
2 subscriber's actual or perceived disability.

3 D. [An insurer] A health care plan shall not deny a  
4 prosthetic [or] device, a custom orthotic device or a complex  
5 rehabilitation technology device benefit for [an individual  
6 with limb loss, or absence] a person with limb loss, limb  
7 absence or mobility limitation that would otherwise be covered  
8 for a non-disabled person seeking medical or surgical  
9 intervention to restore or maintain the ability to perform the  
10 same physical activity.

11 E. A health [benefits] care plan that is delivered,  
12 issued for delivery or renewed in this state that offers  
13 coverage for [prosthetics and] prosthetic devices, custom  
14 orthotic devices or complex rehabilitation technology devices  
15 shall include language describing an [insured's] a subscriber's  
16 rights pursuant to Subsections C and D of this section in its  
17 evidence of coverage and any benefit denial letters.

18 F. Prosthetic [and] device, custom orthotic device  
19 or complex rehabilitation technology device coverage shall not  
20 be subject to separate financial requirements that are  
21 applicable only with respect to that coverage. An individual  
22 or group health care plan may impose cost sharing on prosthetic  
23 [or] devices, custom orthotic devices or complex rehabilitation  
24 technology devices; provided that any cost-sharing requirements  
25 shall not be more restrictive than the cost-sharing

1 requirements applicable to the plan's coverage for inpatient  
2 physician and surgical services.

3 G. An individual or group health care plan that  
4 provides coverage for ~~prosthetic or orthotic~~ services related  
5 to prosthetic devices, custom orthotic devices or complex  
6 rehabilitation technology devices shall ensure access to  
7 medically necessary clinical care and to prosthetic ~~and~~  
8 devices, custom orthotic devices or complex rehabilitation  
9 technology devices and technology from not less than two  
10 distinct prosthetic ~~and~~ device, custom orthotic device or  
11 complex rehabilitation technology device providers in the  
12 ~~managed~~ health care plan's provider network located in the  
13 state. In the event that medically necessary covered  
14 ~~orthotics and prosthetics~~ prosthetic devices, custom orthotic  
15 devices or complex rehabilitation technology devices are not  
16 available from an in-network provider, the ~~insurer~~ health  
17 care plan shall provide processes to refer a ~~member~~  
18 subscriber to an out-of-network provider and shall fully  
19 reimburse the out-of-network provider at a mutually agreed upon  
20 rate less ~~member~~ subscriber cost sharing determined on an in-  
21 network basis.

22 H. If coverage for prosthetic ~~or~~ devices, custom  
23 orthotic devices or complex rehabilitation technology devices  
24 is provided, payment shall be made for the replacement of a  
25 prosthetic ~~or~~ device, a custom orthotic device or a complex

underscored material = new  
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1       rehabilitation technology device or for the replacement of any  
2       part of such devices, without regard to continuous use or  
3       useful lifetime restrictions, if an ordering health care  
4       provider determines that the provision of a replacement device,  
5       or a replacement part of such a device, is necessary because of  
6       any of the following:

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

9               (2) an irreparable change in the condition of  
10      the device or in a part of the device; or

11               (3) the condition of the device or the part of  
12      the device requires repairs, and the cost of such repairs would  
13      be more than sixty percent of the cost of a replacement device  
14      or of the part being replaced.

15               I. Covered benefits for prosthetic devices and  
16       custom orthotic devices shall provide for more than one  
17       prosthetic device or custom orthotic device when medically  
18       necessary, but shall include no more than three prosthetic  
19       devices or custom orthotic devices per affected limb per  
20       covered person during any three-year period. A health care  
21       plan shall cover:

22               (1) the most appropriate prosthetic device or  
23       custom orthotic device determined to be medically necessary by  
24       the subscriber's treating physician and associated medical  
25       providers to restore or maintain the ability to complete

1       activities of daily living or essential job-related activities.  
2       This coverage shall include all services and supplies necessary  
3       for the effective use of a prosthetic device or a custom  
4       orthotic device, including:

5                    (a) formulation of the device's design,  
6       fabrication, material and component selection, measurements,  
7       fittings and static and dynamic alignments;

8                    (b) all materials and components  
9       necessary to use the device;

10                   (c) instructing the subscriber in the  
11       use of the device; and

12                   (d) the repair and replacement of the  
13       device;

14                   (2) a prosthetic device or a custom orthotic  
15       device determined by the subscriber's provider to be the most  
16       appropriate model that meets the medical needs of the  
17       subscriber for performing physical activities, including  
18       running, biking and swimming, and to maximize the subscriber's  
19       upper limb function. This coverage shall include all services  
20       and supplies necessary for the effective use of a prosthetic  
21       device or a custom orthotic device, including:

22                   (a) formulation of the device's design,  
23       fabrication, material and component selection, measurements,  
24       fittings and static and dynamic alignments;

25                   (b) all materials and components

necessary to use the device;

(c) instructing the subscriber in the use of the device; and

(d) the repair and replacement of the device; and

(3) a prosthetic device or custom orthotic device determined by the subscriber's prosthetic or orthotic care provider to be the most appropriate prosthetic device or custom orthotic device that meets the medical needs of the subscriber for purposes of showering or bathing.

J. Coverage for complex rehabilitation technology  
devices shall be based on a subscriber's specific medical, physical, functional and environmental needs and capacities to engage in normal life activities and shall allow a subscriber to obtain more than one complex rehabilitation technology device, but no more than two complex rehabilitation technology devices per covered person during any three-year period. A health care plan shall cover complex rehabilitation technology devices:

(1) for daily use that meets the subscriber's mobility and positioning needs; or

(2) to enable the subscriber to participate in physical activities necessary to achieve or maintain health and support functional independence.

K. A complex rehabilitation technology device that

1       is a manual or power wheelchair shall only be covered pursuant  
2       to this section if the:

3               (1) subscriber has undergone a complex  
4       rehabilitation technology device evaluation conducted by a  
5       licensed physical therapist or occupational therapist who has  
6       no financial relationship with the supplier of the complex  
7       rehabilitation technology device; and

8               (2) complex rehabilitation technology device  
9       is provided by a complex rehabilitation technology device  
10       supplier that:

11               (a) employs at least one assistive  
12       technology professional certified by the rehabilitation  
13       engineering and assistive technology society of North America  
14       who specialized in seating, positioning and mobility and has  
15       direct, in-person involvement in the wheelchair selection for  
16       the subscriber; and

17               (b) makes at least one qualified complex  
18       rehabilitation technology device service technician available  
19       in each service area served by the supplier to service and  
20       repair devices that are furnished by the supplier.

21               [F.] L. Confirmation from a prescribing health care  
22       provider may be required if the prosthetic [or] device, custom  
23       orthotic device or complex rehabilitation technology device or  
24       part being replaced is less than three years old.

25               [J.] M. The provisions of this section do not apply

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

3 N. For the purposes of this section, "complex  
4 rehabilitation technology device" means a subset of durable  
5 medical equipment that:

6 (1) consists of complex rehabilitation manual  
7 and power wheelchairs and mobility devices, including  
8 specialized seating and positioning items, options and  
9 accessories;

10 (2) is designed, manufactured, configured,  
11 adjusted or modified for a specific person to meet that  
12 person's unique medical, physical, functional and environmental  
13 needs and capacities;

14 (3) is generally not useful to a person in the  
15 absence of a disability, illness, injury or other medical  
16 condition; and

17 (4) requires specialized services to ensure  
18 appropriate use of the item, including:

19 (a) an evaluation of the features and  
20 functions necessary to assist the person who will use the  
21 device; or

22 (b) configuring, fitting, programming,  
23 adjusting or adapting the particular device for use by a  
24 person."

25 SECTION 7. APPLICABILITY.--The provisions of this act

.233748.4

1 apply to policies, plans, contracts and certificates delivered  
2 or issued for delivery or renewed, extended or amended in this  
3 state on or after January 1, 2027.

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