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HOUSE BILL 70

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Elizabeth "Liz" Thomson

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE COVERAGE; ENACTING NEW SECTIONS OF THE HEALTH CARE PURCHASING ACT AND THE NEW MEXICO INSURANCE CODE TO REQUIRE COVERAGE FOR EXPENSES RELATED TO PROSTHETICS AND CUSTOM ORTHOTIC DEVICES.

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

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

"[NEW MATERIAL] PROSTHETIC DEVICES--CUSTOM ORTHOTIC 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 custom orthotics that is at least equivalent to that coverage currently provided by the federal medicare program and no less

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

3 B. A group health plan shall cover the most  
4 appropriate prosthetic or custom orthotic device determined to  
5 be medically necessary by the enrollee's treating physician and  
6 associated medical providers to restore functionality to  
7 optimal levels. This coverage shall include all services and  
8 supplies necessary for the effective use of a prosthetic or  
9 custom orthotic device, including:

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

13 (2) all materials and components necessary to  
14 use the device; and

15 (3) instructing the enrollee in the use of the  
16 device.

17 C. A group health plan's reimbursement rate for  
18 prosthetic and custom orthotic devices shall be at least  
19 equivalent to that currently provided by the federal medicare  
20 program and no more restrictive than other coverage under the  
21 group health plan.

22 D. Prosthetic and custom orthotic device coverage  
23 shall be comparable to coverage for other medical and surgical  
24 benefits under the health plan, including restorative internal  
25 devices such as internal prosthetic devices, and shall not be

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1 subject to spending limits or lifetime restrictions.

2 E. Prosthetic and custom orthotic device coverage  
3 shall include coverage for repair and replacement of prosthetic  
4 or custom orthotic devices that are determined medically  
5 necessary to restore or maintain the ability to complete  
6 activities of daily living or essential job-related activities  
7 and that are not solely for comfort or convenience.

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

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

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

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

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

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

14 K. As used in this section, "medicare" means the  
15 federal health coverage offered pursuant to the federal Health  
16 Insurance for the Aged Act, Title XVIII of the Social Security  
17 Amendments of 1965, as then constituted or later amended."

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

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

22 A. A health plan shall provide coverage for  
23 prosthetic and custom orthotic devices that is at least  
24 equivalent to that currently provided by the federal medicare  
25 program and no less favorable than the terms and conditions

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1 that the health plan offers for medical and surgical benefits.

2 B. A health plan shall cover the most appropriate  
3 prosthetic or custom orthotic device determined to be medically  
4 necessary by the enrollee's treating physician and associated  
5 medical providers to restore functionality to optimal levels.  
6 This coverage shall include all services and supplies necessary  
7 for the effective use of a prosthetic or custom orthotic  
8 device, including:

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

12 (2) all materials and components necessary to  
13 use the device; and

14 (3) instructing the enrollee in the use of the  
15 device.

16 C. A health plan's reimbursement rate for  
17 prosthetic and custom orthotic devices shall be at least  
18 equivalent to that currently provided by the federal medicare  
19 program and no more restrictive than other coverage under the  
20 health plan.

21 D. Coverage for prosthetic and custom orthotic  
22 devices shall be comparable to coverage for other medical and  
23 surgical benefits under the health plan, including restorative  
24 internal devices such as internal prosthetic devices, and shall  
25 not be subject to spending limits or lifetime restrictions.

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1           E. Prosthetic and custom orthotic device coverage  
2 shall include coverage for repair or replacement of a  
3 prosthetic or custom orthotic device that is determined  
4 medically necessary to restore or maintain the ability to  
5 complete activities of daily living or essential job-related  
6 activities and that is not solely for comfort or convenience.

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

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

22           H. The requirements of this section shall apply  
23 separately with respect to coverage benefits provided under a  
24 group health plan on an in-network basis and benefits provided  
25 under that health plan on an out-of-network basis.

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

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

14 K. As used in this section:

15 (1) "health plan":

16 (a) means the following types of major  
17 medical coverage: 1) an individual or group health insurance  
18 policy, health care plan or certificate of health insurance  
19 subject to the provisions of Article 22 or Article 23 of the  
20 Insurance Code that is delivered, issued for delivery or  
21 renewed in this state; 2) an individual or group health  
22 maintenance organization contract subject to the Health  
23 Maintenance Organization Law that is delivered, issued for  
24 delivery or renewed in this state; and 3) an individual or  
25 group health care plan subject to the provisions of the

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1 Nonprofit Health Care Plan Law that is delivered, issued for  
2 delivery or renewed in this state; and

3 (b) does not mean a health insurance or  
4 health coverage policy, plan or certificate of coverage that is  
5 intended to supplement major medical group-type coverage, such  
6 as medicare supplement, long-term care, disability income,  
7 specified disease, accident only, hospital indemnity or any  
8 other limited-benefit health insurance policy; and

9 (2) "medicare" means the federal health  
10 coverage offered pursuant to the federal Health Insurance for  
11 the Aged Act, Title XVIII of the Social Security Amendments of  
12 1965, as then constituted or later amended."