PROPOSED AMENDED RULE 111
POST HEARING MARK UP DRAFT
~~CRANIOFACIAL ANOMALY RECONSTRUCTIVE SURGERY COVERAGE~~

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~~SECTION 1. AUTHORITY~~

~~This Rule is issued pursuant to Ark. Code Ann. § 23-79-1503 which requires the Arkansas Insurance Department ("AID") to issue rules for the implementation and administration of coverage for craniofacial anomaly reconstructive surgery under Ark. Code Ann. § 23-79-1501 et seq.~~

~~SECTION 2. DEFINITIONS~~

~~Unless otherwise separately defined in this rule and consistent with state law, the terms or phrases as used in this rule shall follow the definitions of such terms or phrases as defined in Ark. Code Ann. § 23-79-1501.~~

~~SECTION 3. COVERAGE REQUIREMENT REVIEW~~

~~(a) Pursuant to Ark. Code Ann. § 23-79-1502(a)(1), a health benefit plan that is offered, issued, provided, or renewed in this state shall include coverage and benefits for reconstructive surgery and related medical care for a person of any age who is diagnosed as having a craniofacial anomaly if the reconstructive surgery and treatment are medically necessary to improve a functional impairment that results from the craniofacial anomaly as determined by a nationally approved cleft-craniofacial team, approved by the American Cleft Palate-Craniofacial Association ("ACPA-approved team") in Chapel Hill, North Carolina.~~

~~(1) The services included in the coverage and benefits for reconstructive surgery and related medical care may be performed in this state by providers in an ACPA approved team that has diagnosed a craniofacial anomaly, or may be performed by licensed and qualified specialist in this state not in an ACPA-approved team as long as such specialist has received: (i) a diagnosis or evaluation that the patient has a craniofacial anomaly by an ACPA~~

approved team; (ii) a written authorization or approval of the proposed services and treatment plan by an ACPA approved team, including approval of any additional services or care, subsequent to the treatment plan; (iii) the licensed and qualified specialist agrees it must maintain clinical records and provide appropriate documentation whenever requested by an ACPA approved team; (iv) the licensed and qualified specialist must be willing to allow the member(s) of the ACPA approved team to closely oversee all treatment(s); and (v) the licensed and qualified medical specialist must also agree to the ACPA team providing ongoing review for all authorized services including accepting any limitations or withdrawal of such approvals depending on the outcome and medical needs and care of the patient.

(2) Due to the limited number of ACPA approved teams in this state needed to perform diagnoses and review surgery treatment plans for patients with craniofacial anomalies at this time, an ACPA approved team outside this state may provide the evaluation, authorizations and review as required in Section Three (3) (a)(1)(i)-(v) of this rule. Nothing in this rule is intended to require a health benefit plan to provide coverage and benefits for reconstructive surgery services themselves to be performed outside this state.

(b) Pursuant to Ark. Code Ann. § 23-79-1502(b), a health benefit plan shall also provide coverage for dental and vision care as approved by an ACPA approved team following the requirements of this section.

SECTION 4. EFFECTIVE DATE

The effective date of this Rule is November 23, 2015.

ALLEN W. KERR
INSURANCE COMMISSIONER

DATE

CRANIOFACIAL ANOMALY RECONSTRUCTIVE SURGERY COVERAGE
"WENDELYN'S CRANIOFACIAL LAW"

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SECTION 1. AUTHORITY

This Rule is issued pursuant to Ark. Code Ann. § 23-79-1503 which requires the Arkansas Insurance Department ("AID") to issue rules for the implementation and administration of coverage for craniofacial anomaly reconstructive surgery and recommended treatment under Ark. Code Ann. § 23-79-1501 et seq. This Rule is also issued to implement Act 955 of 2021, "An Act to Modify the Law Concerning Craniofacial Coverage and to Establish Wendelyn's Craniofacial Law" (hereafter, Act 955, formerly codified from Act 1226 of 2013 and Act 373 of 2015).

SECTION 2. DEFINITIONS

For purposes of this Rule, the following definitions will apply:

(1) "acquired craniofacial anomaly" means a craniofacial condition caused or brought on only by trauma or tumor.

(2) "craniofacial anomaly" means the abnormal development of the skull and face.

(3) "healthcare service" means a healthcare procedure, treatment, or service provided by a medical provider.

(4) "medical provider" means a person who performs healthcare services for patients with a craniofacial anomaly.

(5) "nonurgent" healthcare service means any craniofacial healthcare service which is not urgent.

(6) "reconstructive surgery" means the use of surgery to alter the form and function of cranial facial tissues due to a congenital or acquired musculoskeletal disorder, including surgery to alter the form and function of the skull and face.

(7) "surgical team member" means a surgical ~~surgical~~ member of an American Cleft Palate-Craniofacial Association ("ACPA") approved team who specializes in craniofacial anomaly reconstructive surgery or a surgical member of an approved team with requisite and equivalent craniofacial surgical experience in the field of service requested to be reviewed.

(8) "urgent healthcare service" means a craniofacial healthcare service for a non-life-threatening condition that, in the opinion of a provider with knowledge of a craniofacial patient's medical condition, requires prompt medical care in order to prevent:

(A) A serious threat to life, limb, or eyesight;

(B) Worsening impairment of a bodily function that threatens the body's ability to regain maximum function;

(C) Worsening dysfunction or damage of any bodily organ or part that threatens the body's ability to recover from the dysfunction or damage; or

(D) Severe pain that cannot be managed without prompt medical care.

SECTION 3. COVERAGE REQUIREMENTS FOR HEALTH INSURERS UNDER THIS RULE

(a) Health insurers shall be subject to all Sections of this Rule.

(b) Pursuant to Ark. Code Ann. § 23-79-1502(b), a health benefit plan shall provide coverage for dental and vision care as approved by an ACPA approved surgical team member following the requirements of this section.

(c) A health benefit plan shall include coverage for the following:

(1) On an annual basis, or during the course of a year:

(A) Sclera contact lenses, including coatings;

(B) Office visits;

(C) An ocular impression of each eye;

(D) Autologous serum eye drops;

(E) eye weights, either surgically and/or external eye weights in one or both eyes as directed by an eye specialist, as needed;

(2) (A) Every two (2) years, two (2) hearing aids and two (2) hearing aid molds for each ear.

(B) As used in this section, "hearing aids" includes behind the ear, in the ear, wearable bone conductions, surgically implanted bone conduction services, and cochlear implants; and

(d) A health benefit plan, or any third party administrator for the plan, shall not require mail order, walkin clinics, or in-network protocols, for compliance with any audiology or others services, as mandated by this Rule.

(e) Any additional tests or procedures that are medically necessary for a craniofacial patient and any diagnostic service incidental to the provision of these benefits in this Section.

(f) For healthcare services to be performed by a nationally approved cleft-craniofacial team, or recommended healthcare services to be performed by a medical provider that is not on a nationally approved cleft-craniofacial team~~non-craniofacial provider~~, a request for written authorization or approval shall be reviewed by the administrator (health insurer) of the health benefit plan:

(A) Within two (2) working days from the request by a nationally approved cleft-craniofacial surgical team member, or by a medical provider that is not on a nationally approved cleft-craniofacial team if the request is accompanied by an Attestation in the form established by this Rule that is signed by a surgical team member of an APCA Approved Team, for a nonurgent case; or

(B) Within twenty-four (24) hours from the request by a nationally approved cleft-craniofacial surgical team member, or by a medical provider that is not on a nationally approved cleft-craniofacial team if the request is accompanied by an Attestation in the form established by this Rule that is signed by a surgical team member of an APCA Approved Team for an urgent case. The health insurer must be familiar with or willing to become familiar with the particular craniofacial diagnoses in question and recommended procedure prior to making a determination. The standards in this section shall follow the Prior Authorization Transparency Initiative.

SECTION 4. MEDICAL PROVIDER OFFICE REQUIREMENTS FOR ACPA APPROVED TEAMS ~~FOR CRANIOFACIAL PROVIDERS~~

(a) Medical Provider Office Requirements for ACPA Approved Teams.

(b) For healthcare services that are recommended by a surgical member of a nationally approved cleft-craniofacial team, a request for written authorization shall be submitted to the health benefit plan:

(A) ~~Within~~ At least two (2) working days ~~from~~ before the proposed service date~~appointment date or services rendered date~~, by a nationally approved cleft-craniofacial surgical team, for a nonurgent case; or

(B) ~~Within~~ At least twenty-four (24) hours ~~from~~ before the proposed services date~~appointment date or services rendered date~~, by a nationally approved cleft-craniofacial surgical team member, for an urgent case.

(c) Every needed service or recommended procedure shall be authorized by an Attestation in the form established by this Rule that is signed by a surgical team member of an APCA Approved team, ~~initiated from~~ and thereafter be monitored under the coordinated treatment plan until the completion of such services by the nationally approved cleft-craniofacial surgical team member.

(d) The standards in this section shall follow the Prior Authorization Transparency Initiative.

SECTION 5. MEDICAL PROVIDER OFFICE REQUIREMENTS FOR NON ACPA APPROVED TEAM MEMBERS ~~CRANIOFACIAL PROVIDERS~~

(a) Medical Provider Office Requirements for Non APCA Approved Team members. ~~Noncraniofacial Providers.~~ A medical provider that is not on a nationally approved cleft craniofacial team shall communicate and respond within two (2) working days from the request ~~appointment or services rendered date~~ to any medical information requests made by the nationally approved cleft-craniofacial surgical team member who ~~initiated~~ made the recommendation described in this Rule~~section~~.

(b) For healthcare services that are recommended by a surgical team member of a nationally approved cleft-craniofacial team that are to be performed by a medical provider that is not on a nationally approved cleft-craniofacial team, a request for written authorization or approval shall be submitted to the health benefit plan:

(i) At least ~~Within~~ two (2) working days before ~~from~~ the proposed service date ~~the appointment date or date of the requested services~~ as recommended by a nationally approved cleft-craniofacial surgical team member, for a nonurgent case; or

(ii) Within twenty-four (24) hours before ~~from~~ the proposed service date ~~appointment date or date of requested services~~ as recommended by a nationally approved cleft-craniofacial surgical team member, for an urgent case.

(c) The recommended needed services shall be the subject of an attestation delivered by a surgical team member of an APCA Approved Team ~~initiated from a referral~~ to the medical provider and thereafter be monitored under the coordinated treatment plan until the completion of such services by the nationally approved cleft-craniofacial surgical team member.

(d) ~~The noncraniofacial provider~~ A medical provider that is not on a nationally approved cleft-craniofacial team shall comply with Section 7 for referrals for services.

(e) The standards in this section shall follow the Prior Authorization Transparency Initiative.

(f) For claims to be admitted or paid under this Section, for purposes of this Section, a medical provider that is not on a nationally approved cleft-craniofacial team shall submit to the health benefit plan a signed attestation form (Exhibit "A") by a surgical team member of an ACPA Approved Team. The health benefit plan shall have two (2) working days from the submission date to review such claim(s) for nonurgent cases and twenty-four (24) hours for urgent cases.

SECTION 6. CODING FEE FOR EVALUATION

Every health benefit plan covering residents or enrollees in this State shall cover charges for evaluations performed by a nationally approved cleft-craniofacial team in its review of proposed services under Section Five (5) of this Rule. The coding designation number and fee amount for such charges shall be the same for all health benefit plans pursuant to an explanatory bulletin by the Commissioner which will be issued annually or as needed.

SECTION 7. ATTESTATION OR AUTHORIZATION FORM

For services to be reviewed under Section Five (5) of this Rule, the medical provider that is not on a nationally approved cleft-craniofacial team ~~non-craniofacial provider~~ shall use the Attestation or Authorization form which shall be designated as Wendelyn's Craniofacial Law Authorization Form as Exhibit "A" to this Rule.

~~**SECTION 8. EFFECTIVE DATE**~~

~~**The effective date of this Rule is January 1, 2022.**~~

ALAN MCCLAIN
INSURANCE COMMISSIONER

DATE

APPENDIX A
ATTESTATION OF SURGICAL MEMBER OF AN
AMERICAN CLEFT PALATE-CRANIO-FACIAL ASSOCIATION
APPROVED TEAM

I, ___[NAME]_____, and a Member of __[Name of organization]___, a cleft-craniofacial team approved by the American Cleft Palate-Craniofacial Association.

On _____, 20__, I examined ___[Patient's Name]___and reviewed his/her medical records. In addition, I examined the proposed treatment plan submitted by Dr. ___[provider's name]___. Copies of the medical records and treatment plan accompany this document.

As a result of these examinations, I attest that Mr./ Ms. [Patient's Last Name] suffers from craniofacial anomaly. I further attest that the proposed treatment plan will provide surgery and treatment that are medically necessary to improve a functional impairment that results from the craniofacial anomaly.

____SIGNATURE_____

____PRINTED NAME_____

____DATE_____

State of Arkansas *As Engrossed: S3/30/21 S4/13/21*
93rd General Assembly **A Bill**
Regular Session, 2021 SENATE BILL 602

By: Senators Irvin, L. Eads

For An Act To Be Entitled

AN ACT TO MODIFY THE LAW CONCERNING CRANIOFACIAL COVERAGE; TO ESTABLISH WENDELYN'S CRANIOFACIAL LAW — CRANIOFACIAL COVERAGE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE LAW CONCERNING CRANIOFACIAL COVERAGE; TO ESTABLISH WENDELYN'S CRANIOFACIAL LAW — CRANIOFACIAL COVERAGE; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 79, Subchapter 15, is amended to add an additional section to read as follows:

23-79-1504. Title.

This subchapter shall be known and may be cited as "Wendelyn's *Craniofacial Law — Craniofacial Coverage".*

SECTION 2. Arkansas Code § 23-79-1501(1), concerning the definition of "craniofacial anomaly" used in the coverage for craniofacial anomaly reconstructive surgery, is amended to read as follows:

(1) "Craniofacial anomaly" means ~~a congenital or acquired musculoskeletal disorder that primarily affects the cranial facial tissue~~ the *abnormal development of the skull and face*;

SECTION 3. Arkansas Code § 23-79-1501(2)(C), concerning the definition

of "health benefit plan" used in the coverage for craniofacial anomaly reconstructive surgery, is amended to read as follows:

(C) "Health benefit plan" does not include:

(i) A disability income plan;

(ii) A credit insurance plan;

(iii) Insurance coverage issued as a supplement to liability insurance;

(iv) Medical payments under an automobile or homeowners' insurance plan;

(v) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(vi) A plan that provides only indemnity for hospital confinement;

(vii) An accident-only plan; ~~*or*~~

(viii) A specified disease plan; *or*

(ix) A plan that provides only dental benefits or eye and vision care benefits; *and*

SECTION *4*. Arkansas Code § 23-79-1501(3), concerning the definition of "reconstructive surgery" used in the coverage for craniofacial anomaly reconstructive surgery, is amended to read as follows:

(3) "Reconstructive surgery" means the use of surgery to alter the form and function of the cranial facial tissues due to a congenital or acquired musculoskeletal disorder, including surgery to alter the form and *function of the skull and face*.

SECTION *5*. Arkansas Code § 23-79-1502(b), concerning medical care coverage for craniofacial anomaly reconstructive surgery requirements, is amended to read as follows:

(b) Medical care coverage required under this section includes coverage for reconstructive surgery, dental care, and vision care~~, and the use of at least one (1) hearing aid~~.

SECTION *6*. Arkansas Code § 23-79-1502, concerning coverage for craniofacial anomaly reconstructive surgery requirements, is amended to add

additional subsections to read as follows:

(c)(1) The services included in the coverage described in subsection (b) of this section shall be authorized by *a surgical member* of a nationally approved cleft-craniofacial team of the American Cleft Palate-Craniofacial Association.

(2) For healthcare services to be performed by a nationally approved cleft-craniofacial team, a request for written authorization or approval shall be reviewed by the administrator of the health benefit plan:

(A) Within two (2) working days from the request by a nationally approved *cleft-craniofacial surgical team* member, for a nonurgent case; or

(B) Within twenty-four (24) hours from the request *by a nationally approved cleft-craniofacial surgical team member, for an urgent case.*

(3)(A) For healthcare services that are recommended by a surgical member of a nationally approved cleft-craniofacial team that are to be performed by a medical provider that is not on a nationally approved cleft-craniofacial team, a request for written authorization or approval shall be reviewed:

(i) Within two (2) working days from the request by a nationally approved cleft-craniofacial surgical team member, for a nonurgent case; or

(ii) Within twenty-four (24) hours from the request by a nationally approved cleft-craniofacial surgical team member, for an urgent case.

(B) A medical provider that is not a craniofacial specialist shall communicate in a timely manner its proposed healthcare services to the nationally approved cleft-craniofacial surgical team member who initiated the recommendation described in subdivision (c)(3)(A) of this section.

(d) A health benefit plan shall include coverage for the following, if medically necessary:

(1) On an annual basis:

(A) Sclera contact lenses, including coatings;

(B) Office visits;

(C) An ocular impression of each *eye; and*

(D) Any additional tests or procedures that are medically necessary for a craniofacial patient;

(2)(A) Every two (2) years, two (2) hearing aids and two (2) hearing aid molds for each ear.

(B) As used in subdivision (d)(2)(A) of this section, "hearing aids" includes behind the ear, in the ear, wearable bone conductions, surgically implanted bone conduction services, and cochlear *implants; and*

(3) Every four (4) years, a dehumidifier.

(e)(1) A nationally approved cleft-craniofacial team that is located in other states may provide the healthcare services, treatment, evaluation, authorizations, and review as described in this section.

(2) For healthcare services performed outside of this state under this section, the insured or enrollee shall not be penalized for out-of-network charges subject to the terms and conditions of the health benefit plan.

SECTION *7.* Arkansas Code § 23-79-1503 is amended to read as follows:

23-79-1503. Rules — Report.

(a) The State Insurance Department shall develop and promulgate rules for the implementation and administration of this subchapter.

(b) The State and Public School Life and Health Insurance Board ~~may develop and promulgate rules for the administration of this subchapter~~ shall follow the rules promulgated by the department for administration of this subchapter for the plans providing health benefits to state and public school employees under § 21-5-401 et seq.

(c) The department shall submit biannual reports to the Chair of the House Committee on Insurance and Commerce and the Chair of the Senate Committee on Insurance and Commerce.

SECTION *8.* EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this state has a limited number of approved certified craniofacial specialists to review and treat individuals with craniofacial anomalies; that increasing healthcare coverage for craniofacial patients allows a nationally approved cleft-craniofacial team outside of this state to provide healthcare services for residents of

this state can decrease the delay in treatment; and that this act is immediately necessary because there are residents in this state who are in need of healthcare services to treat individuals with craniofacial anomalies. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Irvin

APPROVED: 4/27/21