

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

HOUSE BILL 2244

5 By: Representative Maloch  
6  
7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE HEALTH BENEFIT COVERAGE FOR AN  
10 ORTHOTIC DEVICE, AN ORTHOTIC SERVICE, A  
11 PROSTHETIC DEVICE, AND A PROSTHETIC SERVICE UNDER  
12 THE ARKANSAS HEALTH CARE CONSUMER ACT, § 23-99-  
13 401 ET SEQ.; AND FOR OTHER PURPOSES.  
14

## Subtitle

15 TO PROVIDE HEALTH BENEFIT COVERAGE FOR  
16 AN ORTHOTIC DEVICE, AN ORTHOTIC SERVICE,  
17 A PROSTHETIC DEVICE, AND A PROSTHETIC  
18 SERVICE.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 23-99-403 is amended to read as  
25 follows:

26 23-99-403. Definitions.

27 As used in this subchapter:

28 (1) "Acute condition" means a medical condition, illness, or  
29 disease having a short and relatively severe course;

30 (2) "Commissioner" means the Insurance Commissioner;

31 (3) "Covered person" means a person on whose behalf the health  
32 care insurer issuing or delivering the health benefit plan is obligated to  
33 pay benefits pursuant to the health benefit plan;

34 (4) "Health benefit plan" means any individual, blanket, or  
35 group plan, policy, or contract for health care services issued or delivered  
36 by a health care insurer in this state, including indemnity and managed care



1 plans and including self-insured governmental and church plans as defined in  
 2 29 U.S.C. § 1002(32), but excluding plans providing health care services  
 3 pursuant to Arkansas Constitution, Article 5, § 32, the Workers' Compensation  
 4 Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, §  
 5 21-5-601 et seq.;

6 (5) "Health care insurer" or "insurer" means any insurance  
 7 company, hospital and medical service corporation, or health maintenance  
 8 organization issuing or delivering health benefit plans in this state and  
 9 subject to the following laws:

10 (A) The Arkansas Insurance Code;

11 (B) Section 23-76-101 et seq., pertaining to health  
 12 maintenance organizations;

13 (C) Section 23-75-101 et seq., pertaining to hospital and  
 14 medical service corporations; and

15 (D) Any successor laws of the foregoing;

16 (6) "Managed care plan" means a health benefit plan that either  
 17 requires a covered person to use, or creates incentives, including financial  
 18 incentives, for a covered person to use, participating providers;

19 (7)(A) "Orthotic device" means an external device that is:

20 (i) Intended to restore physiological function or  
 21 cosmesis to a patient; and

22 (ii) Custom-designed, fabricated, assembled, fitted,  
 23 or adjusted for the patient using the device prior to or concurrent with the  
 24 delivery of the device to the patient.

25 (B) "Orthotic device" does not include a cane, a crutch, a  
 26 corset, a dental appliance, an elastic hose, an elastic support, a fabric  
 27 support, a generic arch support, a low-temperature plastic splint, a soft  
 28 cervical collar, a truss, or other similar device that:

29 (i) Is carried in stock and sold without therapeutic  
 30 modification by a corset shop, department store, drug store, surgical supply  
 31 facility, or similar retail entity; and

32 (ii) Has no significant impact on the neuromuscular,  
 33 musculoskeletal, or neuromusculoskeletal functions of the body;

34 (8) "Orthotic service" means the evaluation and treatment of a  
 35 condition that requires the use of an orthotic device;

36 ~~(7)(9)~~ "Participating provider" means a provider who or which

1 that has agreed to provide health care services to covered persons with an  
 2 expectation of receiving payment, other than coinsurance, copayments, or  
 3 deductibles, directly or indirectly from the health care insurer;

4 ~~(8)~~(10) "Person" or "entity" means and includes, individually  
 5 and collectively, any individual, corporation, partnership, firm, trust,  
 6 association, voluntary organization, or any other form of business enterprise  
 7 or legal entity. ~~"Entity" shall have the same meaning;~~

8 ~~(9)~~(11) "Policyholder" means the employer, union, individual, or  
 9 other person or entity that purchases the health benefit plan;

10 (12)(A) "Prosthetic device" means an external device that is:

11 (i) Intended to replace an absent external body part  
 12 for the purpose of restoring physiological function or cosmesis to a patient;  
 13 and

14 (ii) Custom-designed, fabricated, assembled, fitted,  
 15 or adjusted for the patient using the device prior to or concurrent with  
 16 being delivered to the patient.

17 (B) "Prosthetic device" does not include an artificial  
 18 eye, an artificial ear, a dental appliance, a cosmetic device such as  
 19 artificial eyelashes or wigs, a device used exclusively for athletic  
 20 purposes, an artificial facial device, or other device that does not have a  
 21 significant impact on the neuromuscular, musculoskeletal, or  
 22 neuromusculoskeletal functions of the body;

23 (13) "Prosthetic service" means the evaluation and treatment of  
 24 a condition that requires the use of a prosthetic device;

25 ~~(10)~~(14) "Specialty" means a provider's particular area of  
 26 specialty within his or her licensed scope of practice; and

27 ~~(11)~~(15) "Type" of provider means the licensed scope of  
 28 practice.

29  
 30 SECTION 2. Arkansas Code Title 23, Chapter 99, Subchapter 4 is amended  
 31 to add an additional section to read as follows:

32 23-99-417. Coverage required for orthotic devices, orthotic services,  
 33 prosthetic devices, and prosthetic services.

34 (a) A health benefit plan that is issued for delivery, delivered,  
 35 renewed, or otherwise contracted for in this state shall provide coverage for  
 36 eligible charges within limits of coverage that are no less than eighty

1 percent (80%) of Medicare allowables as defined by the Center for Medicare  
 2 Medicaid Services, Healthcare Common Procedure Coding System as of January 1,  
 3 2009, or as of a later date if adopted by rule of the Insurance Commissioner  
 4 for:

- 5 (1) An orthotic device;
- 6 (2) An orthotic service;
- 7 (3) A prosthetic device, and
- 8 (4) A prosthetic service.

9 (b)(1) Eligible charges and limits of coverage under subsection (a) of  
 10 this section shall be based on medical necessity or the health benefit plan's  
 11 coverage criteria for other medical services, which may include without  
 12 limitation:

13 (A) The information and recommendation from the treating  
 14 physician in consultation with the insured; and

15 (B) The results of a functional limit test.

16 (2) As used in this section, "functional limit test" includes  
 17 without limitation the insured's:

18 (A) Medical history, including prior use of orthotic  
 19 devices or prosthetic devices if applicable;

20 (B) Current condition, including the status of the  
 21 musculoskeletal system and the nature of other medical problems; and

22 (C) Desire to:

23 (i) Ambulate with respect to lower-limb orthotic  
 24 devices or prosthetic devices; or

25 (ii) Maximize upper-limb function with respect to  
 26 upper-limb orthotic devices or prosthetic devices.

27 (3) A denial or limitation of coverage based on lack of medical  
 28 necessity is subject to external review under State Insurance Department Rule  
 29 76, the Arkansas External Review Regulation.

30 (c) A health benefit plan:

31 (1) May require prior authorization for an orthotic device, an  
 32 orthotic service, a prosthetic device, or a prosthetic service in the same  
 33 manner that prior authorization is required for any other covered benefit;

34 (2) May impose co-payments, deductibles, or coinsurance amounts  
 35 for an orthotic device, an orthotic service, a prosthetic device, or a  
 36 prosthetic service if the amounts are no greater than the co-payments,

1 deductibles, or coinsurance amounts that apply to other benefits under the  
2 health benefit plan;

3 (3) When the replacement or repair is necessitated by anatomical  
4 change or normal use shall cover the necessary repair and necessary  
5 replacement of an orthotic device or a prosthetic device subject to co-  
6 payments, coinsurance, and deductibles that are no more restrictive than the  
7 co-payments, coinsurance, and deductibles that apply to other benefits under  
8 the plan, unless the repair or replacement is necessitated by misuse or loss;  
9 and

10 (4) Shall include a requirement that an orthotic device, an  
11 orthotic service, a prosthetic device, or a prosthetic service be prescribed  
12 by a licensed doctor of medicine, doctor of osteopathy, or doctor of podiatry  
13 and provided by an orthotist or prosthetist licensed by the State of  
14 Arkansas.

15 (d) Coverage of an orthotic device, an orthotic service, a prosthetic  
16 device, or a prosthetic service may be made subject to but no more  
17 restrictive than the provisions of the health benefit plan that apply to  
18 other benefits under the plan.

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