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.

State of Arkansas *As Engrossed: H3/17/09*
87th General Assembly A Bill
Regular Session, 2009 HOUSE BILL 2244

By: Representative Maloch

For An Act To Be Entitled

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

Subtitle

TO PROVIDE HEALTH BENEFIT COVERAGE FOR AN ORTHOTIC DEVICE, AN ORTHOTIC SERVICE, A PROSTHETIC DEVICE, AND A PROSTHETIC SERVICE.

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

SECTION 1. Arkansas Code § 23-99-403 is amended to read as follows:

23-99-403. Definitions.

As used in this subchapter:

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

(2) "Commissioner" means the Insurance Commissioner;

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

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

plans and including self-insured governmental and church plans ~~as defined in 29 U.S.C. § 1002(32)~~, but excluding plans providing health care services pursuant to 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.*

(B) "Health benefit plan" does not include an accident-only, specified disease, hospital indemnity, long-term care, disability income, or other limited-benefit health insurance policy;

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

(A) The Arkansas Insurance Code;

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

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

(D) Any successor laws of the foregoing;

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

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

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

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

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

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

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

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

~~(7)~~(9) "Participating provider" means a provider who or ~~which~~ that has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health care insurer;

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

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

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

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

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

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

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

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

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

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

23-99-417. Coverage required for orthotic devices, orthotic services,

prosthetic devices, and prosthetic services.

(a)(1) Subject to subdivision (a)(2) of this section and subsections (b) and (c) of this section, a health benefit plan that is issued for delivery, delivered, renewed, or otherwise contracted for in this state shall provide coverage for eligible charges within limits of coverage that are no less than eighty percent (80%) of Medicare allowables as defined by the Center for Medicare Medicaid Services, Healthcare Common Procedure Coding System as of January 1, 2009, or as of a later date if adopted by rule of the Insurance Commissioner for:

(*A*) An orthotic device;

(*B*) An orthotic service;

(*C*) A prosthetic device, and

(D) A prosthetic service.

(2) This section does not require coverage for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service for a replacement that occurs more frequently than one (1) time every three (3) years unless medically necessary or indicated by other coverage criteria.

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

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

(B) The results of a functional limit test.

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

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

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

(C) Desire to:

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

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

(3) A denial or limitation of coverage based on lack of medical

necessity is subject to external review under State Insurance Department Rule 76, the Arkansas External Review Regulation.

(c) A health benefit plan:

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

(2) May impose co-payments, deductibles, or coinsurance amounts for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service if the amounts are no greater than the co-payments, deductibles, or coinsurance amounts that apply to other benefits under the health benefit plan;

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

(4) Shall include a requirement that an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service be prescribed by a licensed doctor of medicine, doctor of osteopathy, or doctor of *podiatric medicine and provided by a doctor of medicine, a doctor of osteopathy, a doctor of podiatric medicine, an orthotist, or a prosthetist licensed by the State of* Arkansas.

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

/s/ Maloch