

CHAPTER 171
FORMERLY
HOUSE BILL NO. 76
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTH INSURANCE CONTRACTS AND GROUP AND BLANKET HEALTH INSURANCE.

WHEREAS, as of 2007, more than 1.7 million people in America were living with limb loss, with approximately 185,000 new amputations occurring each year; and

WHEREAS, prosthetic devices enable amputees to continue working and living productive lives and individuals who use prosthetic devices generally experience less pain and disability in their daily lives; and

WHEREAS, prosthetic parity laws require health insurers to offer or provide coverage for prosthetic care equal to, and under terms no less favorable than, coverage offered for essential medical care; and

WHEREAS, as of 2008, 11 states - California, Colorado, Indiana, Louisiana, Maine, Massachusetts, New Hampshire, New Jersey, Oregon, Rhode Island and Vermont – have adopted prosthetic parity laws; and

WHEREAS, states which have adopted prosthetic parity laws have not seen a significant increase in the cost of health insurance, as prosthetic parity reduces spending on physical rehabilitation, future complications and secondary conditions associated with limb loss; and

WHEREAS, the General Assembly believes it is appropriate to adopt prosthetic parity for the benefit Delaware's citizens who have experienced limb loss.

NOW, THEREFORE:

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

Section 1. Amend Chapter 33, Title 18 of the Delaware Code by adding a new section as follows:

“§ 3361. Reimbursement for orthotic and prosthetic services.

(a) Definitions - - For purposes of this section:

(1) "Federal reimbursement rates" means the current listed fee schedule from the Centers for Medicare and Medicaid Services, listing the current Healthcare Common Procedure Coding System (HCPCS) and the corresponding reimbursement rates.

(2) "Orthosis" means a custom fabricated brace or support that is designed based on medical necessity. Orthosis does not include prefabricated or direct-formed orthotic devices or any of the following assistive technology devices: commercially available knee orthoses used following injury or surgery; spastic muscle-tone inhibiting orthoses; upper extremity adaptive equipment; finger splints; hand splints; wrist gauntlets; face masks used following burns; wheelchair seating that is an integral part of the wheelchair and not worn by the patient independent of the wheelchair; fabric or elastic supports; corsets; low-temperature formed plastic splints; trusses; elastic hose; canes; crutches; cervical collars; dental appliances; and any other similar devices, as determined Secretary of the Department of Health and Social Services, commonly carried in stock by a pharmacy, department store, or surgical supply facility.

(3) "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing, as well as providing the initial training necessary to accomplish the fitting of, an orthosis for the support, correction, or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity. The practice of orthotics encompasses evaluation, treatment, and consultation; with basic observational gait and postural analysis, orthotists assess and design orthoses to maximize function and provide not only the support but also the alignment necessary to either prevent or correct a deformity or to improve the safety and efficiency of mobility, locomotion, or both. Orthotic practice includes providing continuing patient care in order to assess its effect on the patient's tissues and to assure proper fit and function of the orthotic device through periodic evaluation.

(4) "Prosthesis" means an artificial limb that is alignable or, in lower-extremity applications, capable of weight bearing. Prosthesis means an artificial medical device that is not surgically implanted and that is used to replace a missing limb, appendage, or other external human body part including an artificial limb, hand, or foot. The

term does not include artificial eyes, ears, noses, dental appliances, ostomy products, or devices such as eyelashes or wigs.

(5) "Prosthetics" means the science and practice of evaluation, measuring, designing, fabricating, assembling, fitting, aligning, adjusting, or servicing, as well as providing the initial training necessary to accomplish the fitting of, a prosthesis through the replacement of external parts of a human body lost due to amputation, congenital deformities, or abscesses. The practice of prosthetics also includes the generation of an image, form, or mold that replicates the patient's body or body segment and that requires rectification of dimensions, contours, and volumes for use in the design and fabrication of a socket to accept a residual anatomic limb to, in turn, create an artificial appendage that is designed either to support body weight or to improve or restore function or cosmesis, or both. Involved in the practice of prosthetics is observational gait analysis and clinical assessment of the requirements necessary to refine and mechanically fix the relative position of various parts of the prosthesis to maximize function, stability, and safety of the patient. The practice of prosthetics includes providing and continuing patient care in order to assess the prosthetic device's effect on the patient's tissues and to assure proper fit and function of the prosthetic device through periodic evaluation.

(b) Every individual health insurance contract, plan, or policy which is delivered, issued for delivery, or renewed in this State on or after January 1, 2012, and which provides medical coverage that includes coverage for physician services in a physician's office, and every policy which provides major medical or similar comprehensive type coverage, shall provide reimbursement for orthotic and prosthetic devices at least equal to federal reimbursements rates provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. §§ 1395k, 1395l, and 1395m and 42 CFR §§ 414.202, 414.210, 414.228, and 410.100, as applicable to this section.

(c) A health insurance contract, plan, or policy may require prior authorization for orthotic and prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

(d) Covered benefits for orthotic or prosthetic devices shall be limited to the most appropriate model that adequately meets the medical needs of the patient.

(e) The repair and replacement of orthotic or prosthetic devices also shall be covered subject to co-payments and deductibles, unless necessitated by misuse or loss.

(f) An insurer may require, if coverage is provided through a managed care plan, that benefits mandated pursuant to this section be covered benefits only if the orthotic or prosthetic devices are provided by a vendor, and orthotic or prosthetic services are rendered by a provider, who is licensed by the State of Delaware to provide orthotics and prosthetics.

(g) This section shall not apply to policies that exclusively cover:

- (1) Hospital confinement indemnity;
- (2) Disability income;
- (3) Accident only;
- (4) Long-term care;
- (5) Medicare supplement;
- (6) Limited benefit health;
- (7) Specified disease indemnity;
- (8) Sickness or bodily injury or death by accident or both; or (9) Other limited benefit policies."

Section 2. Amend Chapter 35, Title 18 of the Delaware Code by adding a new section as follows:

“§ 3571E. Reimbursement for orthotic and prosthetic services.

(a) Definitions - - For purposes of this section:

(1) "Federal reimbursement rates" means the current listed fee schedule from the Centers for Medicare and Medicaid Services, listing the current Healthcare Common Procedure Coding System (HCPCS) and the corresponding reimbursement rates.

(2) "Orthosis" means a custom fabricated brace or support that is designed based on medical necessity. Orthosis does not include prefabricated or direct-formed orthotic devices or any of the following assistive

technology devices: commercially available knee orthoses used following injury or surgery; spastic muscle-tone inhibiting orthoses; upper extremity adaptive equipment; finger splints; hand splints; wrist gauntlets; face masks used following burns; wheelchair seating that is an integral part of the wheelchair and not worn by the patient independent of the wheelchair; fabric or elastic supports; corsets; low-temperature formed plastic splints; trusses; elastic hose; canes; crutches; cervical collars; dental appliances; and any other similar devices as determined Secretary of the Department of Health and Social Services, commonly carried in stock by a pharmacy, department store, or surgical supply facility.

(3) "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing, as well as providing the initial training necessary to accomplish the fitting of, an orthosis for the support, correction, or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity. The practice of orthotics encompasses evaluation, treatment, and consultation; with basic observational gait and postural analysis, orthotists assess and design orthoses to maximize function and provide not only the support but also the alignment necessary to either prevent or correct a deformity or to improve the safety and efficiency of mobility, locomotion, or both. Orthotic practice includes providing continuing patient care in order to assess its effect on the patient's tissues and to assure proper fit and function of the orthotic device through periodic evaluation.

(4) "Prosthesis" means an artificial limb that is alignable or, in lower-extremity applications, capable of weight bearing. Prosthesis means an artificial medical device that is not surgically implanted and that is used to replace a missing limb, appendage, or other external human body part including an artificial limb, hand, or foot. The term does not include artificial eyes, ears, noses, dental appliances, ostomy products, or devices such as eyelashes or wigs.

(5) "Prosthetics" means the science and practice of evaluation, measuring, designing, fabricating, assembling, fitting, aligning, adjusting, or servicing, as well as providing the initial training necessary to accomplish the fitting of, a prosthesis through the replacement of external parts of a human body lost due to amputation, congenital deformities, or abscesses. The practice of prosthetics also includes the generation of an image, form, or mold that replicates the patient's body or body segment and that requires rectification of dimensions, contours, and volumes for use in the design and fabrication of a socket to accept a residual anatomic limb to, in turn, create an artificial appendage that is designed either to support body weight or to improve or restore function or cosmesis, or both. Involved in the practice of prosthetics is observational gait analysis and clinical assessment of the requirements necessary to refine and mechanically fix the relative position of various parts of the prosthesis to maximize function, stability, and safety of the patient. The practice of prosthetics includes providing and continuing patient care in order to assess the prosthetic device's effect on the patient's tissues and to assure proper fit and function of the prosthetic device through periodic evaluation.

(b) Every group and blanket health insurance contract, plan, or policy which is delivered, issued for delivery, or renewed in this State on or after January 1, 2012, and which provides medical coverage that includes coverage for physician services in a physician's office, and every policy which provides major medical or similar comprehensive type coverage, shall provide reimbursement for orthotic and prosthetic devices at least equal to federal reimbursements rates provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. §§ 1395k, 1395l, and 1395m and 42 CFR §§ 414.202, 414.210, 414.228, and 410.100, as applicable to this section.

(c) A health insurance contract, plan, or policy may require prior authorization for orthotic and prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

(d) Covered benefits for orthotic or prosthetic devices shall be limited to the most appropriate model that adequately meets the medical needs of the patient.

(e) The repair and replacement of orthotic or prosthetic devices also shall be covered subject to co-payments and deductibles, unless necessitated by misuse or loss.

(f) An insurer may require, if coverage is provided through a managed care plan, that benefits mandated pursuant to this section be covered benefits only if the orthotic or prosthetic devices are provided by a vendor, and

orthotic or prosthetic services are rendered by a provider, who is licensed by the State of Delaware to provide orthotics and prosthetics.

(g) This section shall not apply to policies that exclusively cover:

- (1) Hospital confinement indemnity;
- (2) Disability income;
- (3) Accident only;
- (4) Long-term care;
- (5) Medicare supplement;
- (6) Limited benefit health;
- (7) Specified disease indemnity;
- (8) Sickness or bodily injury or death by accident, or both; or (9) Other limited benefit policies.”

Approved August 15, 2011