Seventieth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Senator Mathern

A BILL for an Act to amend and reenact section 54-52.1-04.19 of the North Dakota Century Code, relating to orthotic and prosthetic devices benefits coverage under the uniform group insurance program; to provide for a report to the legislative assembly; to provide for application; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-04.19 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.19. Uniform group insurance program - ~~Prosthetic~~Orthotic and prosthetic devices.

1. As used in this section:
   a. "Accredited facility" means an entity accredited to provide comprehensive orthotic or prosthetic devices or services by a centers for Medicare and Medicaid services-approved accrediting organization.
   b. "Orthosis" means:
      (1) An external medical device that is:
         (a) Custom fabricated or custom fitted to a covered individual based on the individual's unique physical condition;
         (b) Applied to a part of the body to correct a deformity, provide support or protection, restrict motion, improve function, or relieve symptoms of disease, injury, or postoperative condition; and
         (c) Determined to be medically necessary by a prescribing physician or other licensed health care provider authorized to prescribe orthotic or prosthetic devices in this state; and
      (2) The provision, repair, or replacement of the device when furnished by:

(a) An accredited facility providing comprehensive orthotic services; or

(b) A licensed health care provider acting within the scope of practice.

c. "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, fitting, adjusting, servicing, and providing ongoing care related to orthotic devices.

d. "Prosthesis" means:

(1) An external medical device used to replace or restore a missing limb or external body part determined to be medically necessary by a prescribing health care provider; and

(2) The provision, repair, or replacement of the device when furnished by:

(a) An accredited facility providing comprehensive prosthetic services; or

(b) A licensed health care provider acting within the scope of practice.

e. "Prosthetics" means the science and practice of evaluating, designing, fabricating, fitting, aligning, adjusting, and servicing prosthetic devices, including ongoing patient care and gait assessment.

2. The board shall provide health insurance benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for orthotic and prosthetic appliances and limbs. This coverage must include devices, supplies, and services, including coverage for more than one prosthesis or orthosis when medically necessary and repair or replacement of a prosthetic limb or socket if medically appropriate, at least equal to the coverage provided under 42 U.S.C. 1395k, 42 U.S.C. 1395l, and 42 U.S.C. 1395m, irrespective of cost-sharing.

3. The coverage provided under this section may not be subject to separate financial requirements or treatment limitations that are more restrictive than those imposed on medical and surgical benefits, including internal restorative devices.

4. Cost-sharing, copayments, and coinsurance applicable to orthotic and prosthetic benefits may not be more restrictive than those applicable to other covered medical or surgical benefits.

5. The coverage provided under this section must include:

a. Orthosis and prosthesis, including related devices, supplies, accessories, and services, that are customized to the covered individual's medical needs to perform activities of daily living or essential job-related functions and furnished pursuant to an order from a licensed prescribing provider;

b. Orthosis or prosthesis determined by the covered individual's provider to be the most appropriate to maximize functional ability, including participation in physical activities such as walking, running, cycling, swimming, or other daily life activities; and

c. Orthosis and prosthesis designed for showering or bathing.

6. Prior authorization for orthotics or prosthetics, including related devices, supplies, or services, only may be required to the same extent and in the same manner as required for other covered medical benefits.

7. Utilization review determinations must apply to the most recent evidence-based treatment and fit criteria recognized by clinical specialists.

8. Coverage for benefits under this section may not be denied:

a. Solely on the basis of an individual's actual or perceived disability; or

b. For an individual with limb loss or limb difference if the requested benefit would otherwise be covered for a nondisabled individual seeking medical or surgical intervention to restore or maintain the same physical function.

9. Evidence of coverage and benefit denial notices must include a description of a covered individual's rights under this section. A claim denial based on medical necessity must be in writing and include a clear explanation of the reasons the request or claim does not meet the applicable medical necessity standards.

10. An insurer shall ensure access to medically necessary prosthetic and custom orthotic care from at least two distinct orthotics or prosthetics providers within the insurer's provider network in this state, if available.

11. If medically necessary orthotic or prosthetic services are not available from an in-network provider, the insurer shall provide access to an out-of-network provider and reimburse the provider at an agreed upon rate, subject to in-network cost-sharing.

12. Coverage must be provided for the replacement of an orthotic or prosthetic device or any component of the device, without regard to continuous use or useful lifetime restrictions, when a prescribing provider determines replacement is necessary due to:
    a. A change in the physiological condition of the covered individual;
    b. Irreparable wear or damage to the device or component; or
    c. The cost of repair exceeding sixty percent of the cost of replacement.
13. An insurer may require a written statement from the prescribing provider which explains why repair or replacement of a device or component is necessary when the device or component is less than three years old.

SECTION 2. PUBLIC EMPLOYEES RETIREMENT SYSTEM - ORTHOTIC AND PROSTHETIC DEVICES BENEFITS - REPORT TO THE LEGISLATIVE ASSEMBLY. Pursuant to section 54-03-28, the public employees retirement system shall provide a report to the legislative assembly regarding the effect of the orthotic and prosthetic devices benefits on the system's health insurance programs, information on the utilization and costs relating to the benefits, and a recommendation regarding whether the benefits should be continued for the system's health insurance programs.

SECTION 3. APPLICATION. This Act applies to health benefits coverage that begins after June 30, 2027, and which does not extend past June 30, 2029.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 2029, and after that date is ineffective.