SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3351

(SENATE AUTHORS: HOFFMAN, Abeler, Klein, Morrison and Housley)

DATE	D-PG	OFFICIAL STATUS
05/20/2023	10091	Introduction and first reading
		Referred to Commerce and Consumer Protection
03/11/2024		Comm report: To pass as amended and re-refer to Health and Human Services

A bill for an act

relating to insurance; requiring medical assistance coverage for orthotic and prosthetic devices; requiring health plans to cover orthotic and prosthetic devices; authorizing rulemaking; amending Minnesota Statutes 2022, section 256B.0625, subdivision 12, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 62Q; 256B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[62Q.665] COVERAGE FOR ORTHOTIC AND PROSTHETIC DEVICES.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Accredited facility" means any entity that is accredited to provide comprehensive orthotic or prosthetic devices or services by a Centers for Medicare and Medicaid Services approved accrediting agency.

(c) "Orthosis" means:

(1) an external medical device that is:

(i) custom-fabricated or custom-fitted to a specific patient based on the patient's unique physical condition;

(ii) applied to a part of the body to correct a deformity, provide support and protection, restrict motion, improve function, or relieve symptoms of a disease, syndrome, injury, or postoperative condition; and

(iii) deemed medically necessary by a prescribing physician or licensed health care provider who has authority in Minnesota to prescribe orthotic and prosthetic devices, supplies, and services; and

(2) any provision, repair, or replacement of a device that is furnished or performed by:

(i) an accredited facility in comprehensive orthotic services; or

(ii) a health care provider licensed in Minnesota and operating within the provider's scope of practice which allows the provider to provide orthotic or prosthetic devices, supplies, or services.

(d) "Orthotics" means:

(1) the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing and providing the initial training necessary to accomplish the fitting of an orthotic device for the support, correction, or alleviation of a neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity;

(2) evaluation, treatment, and consultation related to an orthotic device;

(3) basic observation of gait and postural analysis;

(4) assessing and designing orthosis to maximize function and provide support and alignment necessary to prevent or correct a deformity or to improve the safety and efficiency of mobility and locomotion;

(5) continuing patient care to assess the effect of an orthotic device on the patient's tissues; and

(6) proper fit and function of the orthotic device by periodic evaluation.

(e) "Prosthesis" means:

(1) an external medical device that is:

(i) used to replace or restore a missing limb, appendage, or other external human body part; and

(ii) deemed medically necessary by a prescribing physician or licensed health care provider who has authority in Minnesota to prescribe orthotic and prosthetic devices, supplies, and services; and

(2) any provision, repair, or replacement of a device that is furnished or performed by:

(i) an accredited facility in comprehensive prosthetic services; or

(ii) a health care provider licensed in Minnesota and operating within the provider's scope of practice which allows the provider to provide orthotic or prosthetic devices, supplies, or services.

(f) "Prosthetics" means:

(1) the science and practice of evaluating, 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 or congenital deformities or absences;

(2) the generation of an image, form, or mold that replicates the patient's 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 anatomical appearance, or both;

(3) 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;

(4) providing and continuing patient care in order to assess the prosthetic device's effect on the patient's tissues; and

(5) assuring proper fit and function of the prosthetic device by periodic evaluation.

Subd. 2. **Coverage.** (a) A health plan must provide coverage for orthotic and prosthetic devices, supplies, and services, including repair and replacement, at least equal to the coverage provided under federal law for health insurance for the aged and disabled under sections 1832, 1833, and 1834 of the Social Security Act, United States Code, title 42, sections 1395k, 1395l, and 1395m, but only to the extent consistent with this section.

(b) A health plan may subject orthotic and prosthetic device coverage under this section only to an annual or lifetime dollar maximum that applies generally to all terms and services covered under the plan.

(c) A health plan must not subject orthotic and prosthetic benefits to separate financial requirements that apply only with respect to those benefits. A health plan may impose co-payment and coinsurance amounts on those benefits, except that any financial requirements that apply to such benefits must not be more restrictive than the financial requirements that apply to the health plan's medical and surgical benefits, including those for internal restorative devices.

(d) A health plan may limit the benefits for, or alter the financial requirements for, out-of-network coverage of prosthetic and orthotic devices, except that the restrictions and requirements that apply to those benefits must not be more restrictive than the financial requirements that apply to the out-of-network coverage for the health plan's medical and surgical benefits.

(e) A health plan must not subject coverage for orthotic and prosthetic devices, supplies, and services to any limitations for preexisting conditions.

(f) A health plan must cover orthoses and prostheses when furnished under an order by a prescribing physician or licensed health care prescriber who has authority in Minnesota to prescribe orthoses and prostheses, and that coverage for orthotic and prosthetic devices, supplies, accessories, and services must include those devices or device systems, supplies, accessories, and services that are customized to the covered individual's needs.

(g) A health plan must cover orthoses and prostheses determined by the enrollee's provider to be the most appropriate model that meets the medical needs of the enrollee for purposes of performing physical activities, as applicable, including but not limited to running, biking, and swimming, and maximizing the enrollee's limb function.

(h) A health plan must cover orthoses and prostheses for showering or bathing.

Subd. 3. **Prior authorization.** A health plan may require prior authorization for orthotic and prosthetic devices, supplies, and services in the same manner and to the same extent as prior authorization is required for any other covered benefit.

EFFECTIVE DATE. This section is effective August 1, 2023, and applies to all health plans offered, issued, or renewed on or after that date.

Sec. 2. **[62Q.666] MEDICAL NECESSITY AND NONDISCRIMINATION STANDARDS FOR COVERAGE OF PROSTHETICS OR ORTHOTICS.**

(a) When performing a utilization review for a request for coverage of prosthetic or orthotic benefits, a health plan company shall apply the most recent version of evidence-based treatment and fit criteria as recognized by relevant clinical specialists. The commissioner may identify such criteria by rule.

(b) A health plan company shall render utilization review determinations in a nondiscriminatory manner and shall not deny coverage for habilitative or rehabilitative benefits, including prosthetics or orthotics, solely on the basis of an enrollee's actual or perceived disability.

(c) A health plan company shall not deny a prosthetic or orthotic benefit for an individual with limb loss or absence that would otherwise be covered for a nondisabled person seeking medical or surgical intervention to restore or maintain the ability to perform the same physical activity.

(d) A health plan offered, issued, or renewed in Minnesota that offers coverage for prosthetics and custom orthotic devices shall include language describing an enrollee's rights pursuant to paragraphs (b) and (c) in its evidence of coverage and any benefit denial letters.

(e) A health plan that provides coverage for prosthetic or orthotic services shall ensure access to medically necessary clinical care and to prosthetic and custom orthotic devices and technology from not less than two distinct prosthetic and custom orthotic providers in the plan's provider network located in Minnesota. In the event that medically necessary covered orthotics and prosthetics are not available from an in-network provider, the health plan company shall provide processes to refer a member to an out-of-network provider and shall fully reimburse the out-of-network provider at a mutually agreed upon rate less member cost sharing determined on an in-network basis.

(f) If coverage for prosthetic or custom orthotic devices is provided, payment shall be made for the replacement of a prosthetic or custom orthotic device or for the replacement of any part of such devices, without regard to continuous use or useful lifetime restrictions, if an ordering health care provider determines that the provision of a replacement device, or a replacement part of a device, is necessary because:

(1) of a change in the physiological condition of the patient;

(2) of an irreparable change in the condition of the device or in a part of the device; or

(3) the condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than 60 percent of the cost of a replacement device or of the part being replaced.

(g) Confirmation from a prescribing health care provider may be required if the prosthetic or custom orthotic device or part being replaced is less than three years old.

Sec. 3. Minnesota Statutes 2022, section 256B.0625, subdivision 12, is amended to read:

Subd. 12. **Eyeglasses~~,~~ and dentures~~, and prosthetic and orthotic devices.~~** ~~(a)~~ Medical assistance covers eyeglasses~~,~~ and dentures~~, and prosthetic and orthotic devices~~ if prescribed by a licensed practitioner.

~~(b) For purposes of prescribing prosthetic and orthotic devices, "licensed practitioner" includes a physician, an advanced practice registered nurse, a physician assistant, or a podiatrist.~~

EFFECTIVE DATE. This section is effective January 1, 2025.

Sec. 4. Minnesota Statutes 2022, section 256B.0625, is amended by adding a subdivision to read:

Subd. 72. **Orthotic and prosthetic devices.** Medical assistance covers orthotic and prosthetic devices, supplies, and services according to section 256B.066.

EFFECTIVE DATE. This section is effective January 1, 2025.

Sec. 5. **[256B.066] ORTHOTIC AND PROSTHETIC DEVICES, SUPPLIES, AND SERVICES.**

Subdivision 1. **Definitions.** All terms used in this section have the meanings given them in section 62Q.665, subdivision 1.

Subd. 2. **Coverage requirements.** (a) Medical assistance covers orthotic and prosthetic devices, supplies, and services:

(1) furnished under an order by a prescribing physician or licensed health care prescriber who has authority in Minnesota to prescribe orthoses and prostheses. Coverage for orthotic and prosthetic devices, supplies, accessories, and services under this clause includes those devices or device systems, supplies, accessories, and services that are customized to the enrollee's needs;

(2) determined by the enrollee's provider to be the most appropriate model that meets the medical needs of the enrollee for purposes of performing physical activities, as applicable, including but not limited to running, biking, and swimming, and maximizing the enrollee's limb function; or

(3) for showering or bathing.

(b) The coverage set forth in paragraph (a) includes the repair and replacement of those orthotic and prosthetic devices, supplies, and services described therein.

(c) Coverage of a prosthetic or orthotic benefit must not be denied for an individual with limb loss or absence that would otherwise be covered for a nondisabled person seeking medical or surgical intervention to restore or maintain the ability to perform the same physical activity.

(d) If coverage for prosthetic or custom orthotic devices is provided, payment shall be made for the replacement of a prosthetic or custom orthotic device or for the replacement of any part of such devices, without regard to continuous use or useful lifetime restrictions, if an ordering health care provider determines that the provision of a replacement device, or a replacement part of a device, is necessary because:

(1) of a change in the physiological condition of the patient;

(2) of an irreparable change in the condition of the device or in a part of the device; or

(3) the condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than 60 percent of the cost of a replacement device or of the part being replaced.

Subd. 3. **Restrictions on coverage.** (a) Prior authorization may be required for orthotic and prosthetic devices, supplies, and services.

(b) A utilization review for a request for coverage of prosthetic or orthotic benefits must apply the most recent version of evidence-based treatment and fit criteria as recognized by relevant clinical specialists. The commissioner may identify such criteria by rule.

(c) Utilization review determinations must be rendered in a nondiscriminatory manner and shall not deny coverage for habilitative or rehabilitative benefits, including prosthetics or orthotics, solely on the basis of an enrollee's actual or perceived disability.

(d) Evidence of coverage and any benefit denial letters must include language describing an enrollee's rights pursuant to paragraphs (b) and (c).

(e) Confirmation from a prescribing health care provider may be required if the prosthetic or custom orthotic device or part being replaced is less than three years old.

Subd. 4. **Managed care plan access to care.** (a) Managed care plans and county-based purchasing plans subject to this section must ensure access to medically necessary clinical care and to prosthetic and custom orthotic devices and technology from at least two distinct prosthetic and custom orthotic providers in the plan's provider network located in Minnesota.

(b) In the event that medically necessary covered orthotics and prosthetics are not available from an in-network provider, the plan must provide processes to refer an enrollee to an out-of-network provider and must fully reimburse the out-of-network provider at a mutually agreed upon rate less enrollee cost sharing determined on an in-network basis.

EFFECTIVE DATE. This section is effective January 1, 2025.