TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 1992 - SB 2010

February 18, 2024

SUMMARY OF BILL: Requires a health insurer, beginning July 1, 2024, to provide coverage and reimbursement for prosthetic and custom orthotic devices in a manner that: (1) equals or exceeds the levels of coverage and reimbursement for such devices under the federal Medicare program; and (2) is no more restrictive than coverage of and reimbursement for other medical devices provided under the health benefit plan.

Requires coverage for prosthetic or custom orthotic devices to include: (1) a prosthetic or custom orthotic device determined by the covered person's healthcare provider to be the most appropriate model that adequately meets the medical needs of the covered person for purposes of completing activities of daily living or essential job-related activities; (2) a prosthetic or custom orthotic device determined by the covered person's healthcare provider to be the most appropriate model that meets the medical needs of the covered person for purposes of performing physical activities including, but not limited to, running, cycling, swimming, and strength training, or to maximize the covered person's whole-body health and lower or upper limb function; (3) all materials and components necessary to use the prosthetic or custom orthotic device; (4) instruction to the enrollee on using the prosthetic or custom orthotic device; and (5) repair or replacement of the prosthetic or custom orthotic device.

Requires a health insurer that issues a health benefit plan to consider coverage benefits for prosthetic and custom orthotic devices as habilitative or rehabilitative benefits for purposes of any state or federal requirement for coverage of essential health benefits. Prohibits a health insurer from imposing cost-sharing requirements on prosthetic or custom orthotic devices unless the cost-sharing requirements do not exceed the cost-sharing requirements applicable to the health benefit plan's coverage for inpatient physician and surgical services.

Requires a health insurer to 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 device providers in the health benefit plan's provider network, or, if medically necessary covered prosthetic and custom orthotic devices are not available from an in-network provider, then provide a process by which the covered person is referred to an out-of-network provider and fully reimburse the out-of-network provider at a mutually agreed upon rate less any cost-sharing requirement as determined on an in-network basis.

Requires a health insurer to provide reimbursement for the replacement of a covered prosthetic or custom orthotic device or for any part of such devices, without regard to continuous use or useful lifetime restrictions, if an ordering healthcare provider determines that the provision of a replacement device, or a replacement part of such device, is necessary.

Establishes that a violation of the legislation is subject to sanctions by the Commissioner of the Department of Commerce and Insurance (DCI).

Requires, by January 15, 2025 and each January 15 thereafter, health insurers that provide coverage of prosthetic or custom orthotic devices to report to DCI data regarding coverage of prosthetic and custom orthotic devices under the legislation for the previous calendar year.

Requires DCI to submit a report of aggregated and de-identified data to the Chair of the Commerce and Labor Committee of the Senate, the Chair of the Insurance Committee of the House of Representatives, and the Legislative Librarian by January 31, 2025, and by each January 31 thereafter.

FISCAL IMPACT:

Increase State Expenditures – $4,749,700/FY24-25 and Subsequent Years

Increase Federal Expenditures – $6,204,300/FY24-25 and Subsequent Years

Increase Local Expenditures – $24,100/FY24-25 and Subsequent Years*

Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111): Such legislation will result in an increase in the cost of health insurance premiums to cover the patient's share of the cost of procedures and treatments covered by plans. It is estimated that the increase to each individual's total premium will be less than one percent.

Assumptions:

- As of February 2024, the Department of Commerce and Insurance (DCI) showed a total population of 555,103 individuals on qualified health plans (QHPs).
- According to estimates from multiple QHP providers, the increase in costs per member per month as a result from the proposed legislation will be approximately $0.10. This would result in an increase in state expenditures of $666,124 ($0.10 x 12 x 555,103) annually in order for DCI to defray the costs of this increase.
- Based on information provided by the Division of TennCare (Division), between 2021 and 2023 the Division reimbursed an average of 70,126 prosthetics and orthotics procedures per year.
- The average difference in reimbursement per procedure relative to the federal Medicare rate is estimated to be $134.59.
- The Division will experience an increase in expenditures of $9,438,258 (70,126 procedures x $134.59) in FY24-25 and subsequent years for reimbursement of prosthetic and orthotic procedures.
- Medicaid expenditures receiving matching funds a rate of 64.928 percent federal to 35.072 percent state. Of this amount, $3,310,186 ($9,438,258 x 35.072%) will be in state funds, and $6,128,072 ($9,438,258 x 64.928%) will be in federal funds.

- The CoverKids program also provides reimbursement for prosthetics and orthotics. Between 2021 and 2023 the program reimbursed an average of 678 procedures, and the average difference in reimbursement with the federal Medicare rate averaged $115.94 per procedure.
- CoverKids will experience an increase in expenditures of $78,607 (678 procedures x $115.94) in FY24-25 and subsequent years for reimbursement of prosthetics and orthotics procedures.
- Expenditures for the CoverKids program receive matching funds at a rate of 75.453 percent federal to 24.547 percent state. Of this amount, $19,296 ($78,607 x 24.547%) will be in state expenditures and $59,311 ($78,607 x 75.453%) will be in federal expenditures.
- The proposed legislation will require plans under the State Group Insurance Program (SGIP) to reimburse prosthetics and orthotics procedures at a rate equal to the federal Medicare reimbursement rate.
- Based on information provided by SGIP carriers, raising the reimbursement rate for these procedures will result in a total increase of $1,488,625 in expenditures to the SGIP in FY24-25 and subsequent years.
- It is estimated that 48 percent of members are on the State Employee Plan, 43 percent are on the Local Education Plan and 9 percent are on the Local Government Plan.
- The state contributes 80 percent of member premiums resulting in a recurring increase in state expenditures of $571,632 ($1,488,625 x 48% x 80%).
- Some state plan members' insurance premiums are funded through federal dollars. It is estimated 14.27 percent of the state share of the state plan is funded with federal dollars, resulting in an increase in federal expenditures of $81,572 ($571,632 x 14.27%).
- The state contributes 45 percent of instructional member premiums (75 percent of Local Education Plan members) and 30 percent of support staff member premiums (25 percent of Local Education Plan members) resulting in state expenditures of $264,045 [($1,488,625 x 43% x 75% x 45%) 216,037 + ($1,488,625 x 43% x 25% x 30%)].
- The state does not contribute to the Local Government Plan. It is estimated the Local Government Plan would be responsible for a mandatory increase in local expenditures estimated to be $133,976 ($1,488,625 x 9%).
- The increase in state expenditures to the SGIP is estimated to be $754,105 ($571,632 - $81,572 + $264,045).
- The total increase in state expenditures is estimated to be $4,749,711 ($666,124 + $3,310,186 + $19,296 + $754,105) in FY24-25 and subsequent years.
- The total increase in federal expenditures is estimated to be $6,204,262 ($6,128,072 + $59,311 + $16,879) in FY24-25 and subsequent years.
- The increase in local expenditures is estimated to be $24,139 in FY24-25 and subsequent years.
- Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111): Such legislation will result in an increase in the cost of health insurance premiums to cover the patient's share of the cost of procedures and treatments covered by plans. It is estimated that the increase to each individual’s total premium will be less than one percent.

IMPACT TO COMMERCE:

Increase Business Revenue – $10,978,100/FY24-25 and Subsequent Years

Increase Business Expenditures –
Less than $10,978,100/FY24-25 and Subsequent Years

Assumptions:

- Healthcare providers will experience an increase in business revenue of $10,978,112 in FY24-25 and subsequent years from providing additional services.
- The increase in business expenditures is estimated to be less than those amounts for companies to retain solvency.
- Additional effects upon private insurance carriers and healthcare providers will be dependent upon various unknown factors subject to the rates and contractual agreements comprising each individual policy of healthcare and cannot be determined with reasonable certainty.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner, Executive Director

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