

HOUSE BILL 865

J5, J1

4lr3211
CF SB 614

By: **Delegates Martinez, Acevero, Alston, Bagnall, R. Lewis, J. Long, Roberts, Taylor, Turner, Williams, and Woods**

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program and Health Insurance – Coverage for**
3 **Orthoses and Prostheses**

4 FOR the purpose of requiring the Maryland Medical Assistance Program and certain
5 insurers, nonprofit health service plans, and health maintenance organizations to
6 provide certain coverage related to orthoses and prostheses; requiring certain
7 insurers, nonprofit health service plans, and health maintenance organizations to
8 render utilization review determinations relating to the coverage in a
9 nondiscriminatory manner; establishing certain provider network and
10 reimbursement requirements relating to the covered benefits; and generally relating
11 to coverage and reimbursement for orthoses and prostheses.

12 BY repealing and reenacting, without amendments,
13 Article – Health – General
14 Section 15–103(a)(1)
15 Annotated Code of Maryland
16 (2023 Replacement Volume)

17 BY repealing and reenacting, with amendments,
18 Article – Health – General
19 Section 15–103(a)(2)(xxii) and (xxiii)
20 Annotated Code of Maryland
21 (2023 Replacement Volume)

22 BY adding to
23 Article – Health – General
24 Section 15–103(a)(2)(xxiv)
25 Annotated Code of Maryland
26 (2023 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
 2 Article – Insurance
 3 Section 15–820 and 15–844
 4 Annotated Code of Maryland
 5 (2017 Replacement Volume and 2023 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 7 That the Laws of Maryland read as follows:

8 **Article – Health – General**

9 15–103.

10 (a) (1) The Secretary shall administer the Maryland Medical Assistance
 11 Program.

12 (2) The Program:

13 (xxii) Beginning on January 1, 2024, shall provide gender–affirming
 14 treatment in accordance with § 15–151 of this subtitle; [and]

15 (xxiii) Beginning on July 1, 2025, shall provide, subject to the
 16 limitations of the State budget, and as permitted by federal law, coverage for biomarker
 17 testing in accordance with § 15–859 of the Insurance Article; AND

18 **(XXIV) BEGINNING ON JANUARY 1, 2025, SHALL PROVIDE**
 19 **COVERAGE FOR ORTHOSES AND PROSTHESES IN ACCORDANCE WITH §§ 15–820 AND**
 20 **15–844 OF THE INSURANCE ARTICLE.**

21 **Article – Insurance**

22 15–820.

23 (a) In this section, [“orthopedic brace” means a rigid or semi–rigid device that is
 24 used to:

25 (1) support a weak or deformed body member; or

26 (2) restrict or eliminate motion in a diseased or injured part of the body.]
 27 **“ORTHOSIS” MEANS A CUSTOM DESIGNED, CUSTOM FABRICATED, CUSTOM FITTED,**
 28 **PREFABRICATED, OR MODIFIED DEVICE TO TREAT A NEUROMUSCULAR OR**
 29 **MUSCULOSKELETAL DISORDER OR ACQUIRED CONDITION.**

30 **(B) THIS SECTION APPLIES TO:**

1 **(1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT**
2 **PROVIDE HOSPITAL, MEDICAL, OR SURGICAL BENEFITS TO INDIVIDUALS OR GROUPS**
3 **ON AN EXPENSE-INCURRED BASIS UNDER HEALTH INSURANCE POLICIES OR**
4 **CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE; AND**

5 **(2) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE**
6 **HOSPITAL, MEDICAL, OR SURGICAL BENEFITS TO INDIVIDUALS OR GROUPS UNDER**
7 **CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.**

8 **[(b)] (C) [Each health insurance contract that is delivered or issued for delivery**
9 **in the State by a nonprofit health service plan and that provides hospital benefits] AN**
10 **ENTITY SUBJECT TO THIS SECTION shall provide [benefits] COVERAGE for [orthopedic**
11 **braces] ORTHOSES AND, SUBJECT TO SUBSECTION (D) OF THIS SECTION,**
12 **REPLACEMENTS FOR ORTHOSES.**

13 **(D) (1) AN ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE**
14 **COVERAGE FOR REPLACEMENTS OF ORTHOSES WITHOUT REGARD TO CONTINUOUS**
15 **USE OR USEFUL LIFETIME RESTRICTIONS IF AN ORDERING HEALTH CARE PROVIDER**
16 **DETERMINES THAT THE PROVISION OF A REPLACEMENT ORTHOSIS OR A**
17 **REPLACEMENT OF A COMPONENT OF THE ORTHOSIS IS NECESSARY:**

18 **(I) BECAUSE OF A CHANGE IN THE PHYSIOLOGICAL CONDITION**
19 **OF THE PATIENT;**

20 **(II) BECAUSE OF AN IRREPARABLE CHANGE IN THE CONDITION**
21 **OF THE ORTHOSIS OR A COMPONENT OF THE ORTHOSIS; OR**

22 **(III) BECAUSE THE CONDITION OF THE ORTHOSIS OR A**
23 **COMPONENT OF THE ORTHOSIS REQUIRES REPAIRS AND THE COST OF THE REPAIRS**
24 **WOULD BE MORE THAN 60% OF THE COST OF REPLACING THE ORTHOSIS OR THE**
25 **COMPONENT OF THE ORTHOSIS.**

26 **(2) AN ENTITY SUBJECT TO THIS SECTION MAY REQUIRE AN**
27 **ORDERING HEALTH CARE PROVIDER TO CONFIRM THAT THE ORTHOSIS OR**
28 **COMPONENT OF THE ORTHOSIS BEING REPLACED MEETS THE REQUIREMENTS OF**
29 **PARAGRAPH (1) OF THIS SUBSECTION IF THE ORTHOSIS OR COMPONENT IS LESS**
30 **THAN 3 YEARS OLD.**

31 **(E) AN ENTITY SUBJECT TO THIS SECTION SHALL CONSIDER THE COVERED**
32 **BENEFITS UNDER THIS SECTION HABILITATIVE OR REHABILITATIVE BENEFITS FOR**
33 **PURPOSES OF ANY FEDERAL OR STATE REQUIREMENT FOR COVERAGE OF**
34 **ESSENTIAL HEALTH BENEFITS.**

1 **(F) THE COVERED BENEFITS UNDER THIS SECTION MAY NOT BE SUBJECT**
2 **TO:**

3 **(1) SEPARATE FINANCIAL REQUIREMENTS THAT ARE APPLICABLE**
4 **ONLY WITH RESPECT TO THAT COVERAGE; OR**

5 **(2) A HIGHER COPAYMENT OR COINSURANCE REQUIREMENT THAN**
6 **THE COPAYMENT OR COINSURANCE FOR BENEFITS COVERED UNDER THE POLICY OR**
7 **CONTRACT OF THE INSURED OR ENROLLEE THAT RELATE TO PRIMARY CARE OR**
8 **INPATIENT PHYSICIAN OR SURGICAL SERVICES.**

9 **(G) AN ENTITY SUBJECT TO THIS SECTION MAY NOT IMPOSE AN ANNUAL OR**
10 **LIFETIME DOLLAR MAXIMUM ON COVERAGE REQUIRED UNDER THIS SECTION**
11 **SEPARATE FROM ANY ANNUAL OR LIFETIME DOLLAR MAXIMUM THAT APPLIES IN**
12 **THE AGGREGATE TO ALL COVERED BENEFITS UNDER THE POLICY OR CONTRACT OF**
13 **THE INSURED OR ENROLLEE.**

14 **(H) (1) AN ENTITY SUBJECT TO THIS SECTION MAY NOT ESTABLISH**
15 **REQUIREMENTS FOR MEDICAL NECESSITY OR APPROPRIATENESS FOR THE**
16 **COVERAGE REQUIRED UNDER THIS SECTION THAT ARE MORE RESTRICTIVE THAN**
17 **THE INDICATIONS AND LIMITATIONS OF COVERAGE AND MEDICAL NECESSITY**
18 **ESTABLISHED UNDER THE MEDICARE COVERAGE DATABASE.**

19 **(2) THE COVERED BENEFITS UNDER THIS SECTION INCLUDE**
20 **ORTHOSES IF THE TREATING PHYSICIAN DETERMINES THAT THE ORTHOSIS IS**
21 **MEDICALLY NECESSARY FOR:**

22 **(I) COMPLETING ACTIVITIES OF DAILY LIVING;**

23 **(II) ESSENTIAL JOB-RELATED ACTIVITIES; OR**

24 **(III) PERFORMING PHYSICAL ACTIVITIES, INCLUDING RUNNING,**
25 **BIKING, SWIMMING, STRENGTH TRAINING, AND OTHER ACTIVITIES TO MAXIMIZE**
26 **THE WHOLE-BODY HEALTH AND LOWER OR UPPER LIMB FUNCTION OF THE INSURED**
27 **OR ENROLLEE.**

28 **(I) AN ENTITY SUBJECT TO THIS SECTION SHALL RENDER UTILIZATION**
29 **REVIEW DETERMINATIONS IN A NONDISCRIMINATORY MANNER AND MAY NOT DENY**
30 **COVERAGE FOR BENEFITS REQUIRED UNDER THIS SECTION SOLELY ON THE BASIS**
31 **OF AN INSURED'S OR ENROLLEE'S ACTUAL OR PERCEIVED DISABILITY.**

32 **(J) AN ENTITY SUBJECT TO THIS SECTION MAY NOT DENY BENEFITS**
33 **REQUIRED UNDER THIS SECTION FOR AN INDIVIDUAL WITH LIMB LOSS OR ABSENCE**

1 THAT WOULD OTHERWISE BE COVERED FOR A NONDISABLED INDIVIDUAL SEEKING
2 MEDICAL OR SURGICAL INTERVENTION TO RESTORE OR MAINTAIN THE ABILITY TO
3 PERFORM THE SAME PHYSICAL ACTIVITY.

4 (K) AN ENTITY SUBJECT TO THIS SECTION SHALL INCLUDE LANGUAGE
5 DESCRIBING THE INSURED'S OR ENROLLEE'S RIGHTS UNDER SUBSECTIONS (I) AND
6 (J) OF THIS SECTION IN ITS EVIDENCE OF COVERAGE AND ANY BENEFIT DENIAL
7 LETTER.

8 (L) (1) AN ENTITY SUBJECT TO THIS SECTION SHALL ENSURE ACCESS TO
9 AT LEAST TWO DISTINCT ORTHOPEDIC PROVIDERS IN THE ENTITY'S PROVIDER
10 NETWORK IN THE STATE FOR ORTHOSES, ORTHOSIS TECHNOLOGY, AND MEDICALLY
11 NECESSARY CLINICAL CARE FOR ORTHOSES.

12 (2) (I) IN THE EVENT THAT THE BENEFITS REQUIRED UNDER THIS
13 SECTION ARE NOT AVAILABLE FROM AN IN-NETWORK PROVIDER, AN ENTITY
14 SUBJECT TO THIS SECTION SHALL PROVIDE PROCESSES TO REFER AN INSURED OR
15 ENROLLEE TO AN OUT-OF-NETWORK PROVIDER.

16 (II) 1. AN ENTITY SUBJECT TO THIS SECTION SHALL
17 REIMBURSE AN OUT-OF-NETWORK PROVIDER AT A MUTUALLY AGREED ON RATE
18 AFTER SUBTRACTING ANY COST-SHARING REQUIREMENTS OF AN INSURED OR
19 ENROLLEE.

20 2. COST-SHARING REQUIREMENTS OF AN INSURED OR
21 ENROLLEE UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL BE
22 DETERMINED AS IF THE BENEFITS WERE PROVIDED BY AN IN-NETWORK PROVIDER.

23 15-844.

24 (a) In this section, ["prosthetic device" means an artificial device to replace, in
25 whole or in part, a leg, an arm, or an eye] "PROSTHESIS" MEANS A CUSTOM DESIGNED,
26 FABRICATED, FITTED, OR MODIFIED DEVICE TO TREAT PARTIAL OR TOTAL LIMB
27 LOSS FOR PURPOSES OF RESTORING PHYSIOLOGICAL FUNCTION OR COSMESIS.

28 (b) This section applies to:

29 (1) insurers and nonprofit health service plans that provide hospital,
30 medical, or surgical benefits to individuals or groups on an expense-incurred basis under
31 health insurance policies or contracts that are issued or delivered in the State; and

32 (2) health maintenance organizations that provide hospital, medical, or
33 surgical benefits to individuals or groups under contracts that are issued or delivered in
34 the State.

1 (c) An entity subject to this section shall provide coverage for:

2 (1) [prosthetic devices] **PROSTHESES**;

3 (2) components of [prosthetic devices] **PROSTHESES**; [and]

4 (3) repairs to [prosthetic devices] **PROSTHESES**; **AND**

5 (4) **SUBJECT TO SUBSECTION (D) OF THIS SECTION, REPLACEMENTS**
6 **OF PROSTHESES OR PROSTHESIS COMPONENTS.**

7 **(D) (1) AN ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE**
8 **COVERAGE FOR REPLACEMENTS OF PROSTHESES WITHOUT REGARD TO**
9 **CONTINUOUS USE OR USEFUL LIFETIME RESTRICTIONS IF AN ORDERING HEALTH**
10 **CARE PROVIDER DETERMINES THAT THE PROVISION OF A REPLACEMENT**
11 **PROSTHESIS OR A COMPONENT OF THE PROSTHESIS IS NECESSARY:**

12 **(I) BECAUSE OF A CHANGE IN THE PHYSIOLOGICAL CONDITION**
13 **OF THE PATIENT;**

14 **(II) BECAUSE OF AN IRREPARABLE CHANGE IN THE CONDITION**
15 **OF THE PROSTHESIS OR A COMPONENT OF THE PROSTHESIS; OR**

16 **(III) BECAUSE THE CONDITION OF THE PROSTHESIS OR THE**
17 **COMPONENT OF THE PROSTHESIS REQUIRES REPAIRS AND THE COST OF THE**
18 **REPAIRS WOULD BE MORE THAN 60% OF THE COST OF REPLACING THE PROSTHESIS**
19 **OR THE COMPONENT OF THE PROSTHESIS.**

20 **(2) AN ENTITY SUBJECT TO THIS SECTION MAY REQUIRE AN**
21 **ORDERING HEALTH CARE PROVIDER TO CONFIRM THAT THE PROSTHESIS OR**
22 **COMPONENT OF THE PROSTHESIS BEING REPLACED MEETS THE REQUIREMENTS OF**
23 **PARAGRAPH (1) OF THIS SUBSECTION IF THE PROSTHESIS OR COMPONENT IS LESS**
24 **THAN 3 YEARS OLD.**

25 **(E) AN ENTITY SUBJECT TO THIS SECTION SHALL CONSIDER THE COVERED**
26 **BENEFITS UNDER THIS SECTION HABILITATIVE OR REHABILITATIVE BENEFITS FOR**
27 **PURPOSES OF ANY FEDERAL OR STATE REQUIREMENT FOR COVERAGE OF**
28 **ESSENTIAL HEALTH BENEFITS.**

29 **[(d)] (F) The covered benefits under this section may not be subject to:**

30 **(1) SEPARATE FINANCIAL REQUIREMENTS THAT ARE APPLICABLE**
31 **ONLY WITH RESPECT TO THAT COVERAGE; OR**

1 **(2)** a higher copayment or coinsurance requirement than the copayment or
2 coinsurance for [primary care] benefits covered under the policy or contract of the insured
3 or enrollee **THAT RELATE TO PRIMARY CARE OR INPATIENT PHYSICIAN OR SURGICAL**
4 **SERVICES.**

5 **[(e)] (G)** An entity subject to this section may not impose an annual or lifetime
6 dollar maximum on coverage required under this section separate from any annual or
7 lifetime dollar maximum that applies in the aggregate to all covered benefits under the
8 policy or contract of the insured or enrollee.

9 **[(f)] (H) (1)** An entity subject to this section may not establish requirements
10 for medical necessity or appropriateness for the coverage required under this section that
11 are more restrictive than the indications and limitations of coverage and medical necessity
12 established under the Medicare Coverage Database.

13 **(2) THE COVERED BENEFITS UNDER THIS SECTION INCLUDE**
14 **PROSTHESES IF THE TREATING PHYSICIAN DETERMINES THAT THE PROSTHESIS IS**
15 **MEDICALLY NECESSARY FOR:**

16 **(I) COMPLETING ACTIVITIES OF DAILY LIVING;**

17 **(II) ESSENTIAL JOB-RELATED ACTIVITIES; OR**

18 **(III) PERFORMING PHYSICAL ACTIVITIES, INCLUDING RUNNING,**
19 **BIKING, SWIMMING, STRENGTH TRAINING, AND OTHER ACTIVITIES TO MAXIMIZE**
20 **THE WHOLE-BODY HEALTH AND LOWER OR UPPER LIMB FUNCTION OF THE INSURED**
21 **OR ENROLLEE.**

22 **(I) AN ENTITY SUBJECT TO THIS SECTION SHALL RENDER UTILIZATION**
23 **REVIEW DETERMINATIONS IN A NONDISCRIMINATORY MANNER AND MAY NOT DENY**
24 **COVERAGE FOR BENEFITS REQUIRED UNDER THIS SECTION SOLELY ON THE BASIS**
25 **OF AN INSURED'S OR ENROLLEE'S ACTUAL OR PERCEIVED DISABILITY.**

26 **(J) AN ENTITY SUBJECT TO THIS SECTION MAY NOT DENY BENEFITS**
27 **REQUIRED UNDER THIS SECTION FOR AN INDIVIDUAL WITH LIMB LOSS OR ABSENCE**
28 **THAT WOULD OTHERWISE BE COVERED FOR A NONDISABLED PERSON SEEKING**
29 **MEDICAL OR SURGICAL INTERVENTION TO RESTORE OR MAINTAIN THE ABILITY TO**
30 **PERFORM THE SAME PHYSICAL ACTIVITY.**

31 **(K) AN ENTITY SUBJECT TO THIS SECTION SHALL INCLUDE LANGUAGE**
32 **DESCRIBING THE INSURED'S OR ENROLLEE'S RIGHTS UNDER SUBSECTIONS (I) AND**
33 **(J) OF THIS SECTION IN ITS EVIDENCE OF COVERAGE AND ANY BENEFIT DENIAL**
34 **LETTER.**

1 **(L) (1) AN ENTITY SUBJECT TO THIS SECTION SHALL ENSURE ACCESS TO**
2 **AT LEAST TWO DISTINCT PROSTHESIS PROVIDERS IN THE ENTITY'S PROVIDER**
3 **NETWORK IN THE STATE FOR PROSTHESES, PROSTHESIS TECHNOLOGY, AND**
4 **MEDICALLY NECESSARY CLINICAL CARE FOR PROSTHESES.**

5 **(2) (I) IN THE EVENT THAT THE BENEFITS REQUIRED UNDER THIS**
6 **SECTION ARE NOT AVAILABLE FROM AN IN-NETWORK PROVIDER, AN ENTITY**
7 **SUBJECT TO THIS SECTION SHALL PROVIDE PROCESSES TO REFER AN INSURED OR**
8 **ENROLLEE TO AN OUT-OF-NETWORK PROVIDER.**

9 **(II) 1. AN ENTITY SUBJECT TO THIS SECTION SHALL**
10 **REIMBURSE AN OUT-OF-NETWORK PROVIDER AT A MUTUALLY AGREED ON RATE**
11 **AFTER SUBTRACTING ANY COST-SHARING REQUIREMENTS OF AN INSURED OR**
12 **ENROLLEE.**

13 **2. COST-SHARING REQUIREMENTS OF AN INSURED OR**
14 **ENROLLEE UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL BE**
15 **DETERMINED AS IF THE BENEFITS WERE PROVIDED BY AN IN-NETWORK PROVIDER.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That:

17 (a) On or before June 30, 2030, each entity that is subject to §§ 15–820 and
18 15–844 of the Insurance Article, as enacted by Section 1 of this Act, and each managed care
19 organization providing coverage under the Maryland Medical Assistance Program shall
20 report to the Maryland Insurance Administration and the Maryland Department of Health,
21 respectively, on its compliance with §§ 15–820 and 15–844 of the Insurance Article or §
22 15–103(a)(2)(xxiv) of the Health – General Article, as enacted by Section 1 of this Act and
23 as applicable, for calendar years 2025 through 2028.

24 (b) (1) The report required under subsection (a) of this section shall be in a
25 form prescribed jointly by the Maryland Insurance Administration and the Maryland
26 Department of Health.

27 (2) The form shall include the number of claims and the total amount of
28 claims paid in the State for the coverage required by §§ 15–820 and 15–844 of the Insurance
29 Article or § 15–103(a)(2)(xxiv) of the Health – General Article, as enacted by Section 1 of
30 this Act and as applicable.

31 (c) (1) The Maryland Insurance Administration and the Maryland
32 Department of Health shall aggregate the data required under subsection (b) of this section
33 by calendar year in a joint report.

34 (2) On or before December 31, 2030, the Maryland Insurance
35 Administration and the Maryland Department of Health shall submit the joint report to

1 the Senate Finance Committee and the House Health and Government Operations
2 Committee, in accordance with § 2-1257 of the State Government Article.

3 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
4 apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the
5 State on or after January 1, 2025.

6 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 January 1, 2025.