

Written Testimony of

Peter W. Thomas, J.D.

Before the Maryland Senate
Committee on Finance

On Senate Bill No. 614
Maryland Medical Assistance Program and Health Insurance Coverage for
Orthoses and Prostheses

Peter W. Thomas, J.D.
Managing Partner
Powers Law Firm
1501 M Street, NW, Suite 700
Washington, DC 20005
Residence:
3903 Thornapple Street
Chevy Chase, Maryland 20815
Peter.Thomas@powerslaw.com

Chairman Beidle, Vice Chair Klausmeier, and Members of the Finance Committee:

I write in strong support of Senate Bill 614, the Maryland Medical Assistance Program and Health Insurance Coverage for Orthoses and Prostheses Act pending before this Committee today. As a resident of Maryland since 1997 and as a bilateral amputee below the knees for the past fifty years, I can attest to the importance of enacting this important legislation and I urge you to do so as soon as possible.

Growing up with two artificial legs since age ten due to a car accident, I have seen vast improvements in prosthetic and orthotic technology, the clinical services, fitting techniques, and quality of care currently available to individuals with limb loss and limb difference. As a child, I walked on artificial legs that were very limiting for the performance of any activity other than simple ambulation. At age 14, I learned how to snow ski with the help of specialized limbs that protected my knees and were more stable than the prostheses I used to walk. Skiing freed me from a slow-motion life. For the first time in four years, I felt my blood pumping and the wind in my hair when I traversed the slopes. I began racing and over my teen years won multiple medals at the National Handicap Ski Championships in Colorado.

Skiing was a tremendous catalyst to my rehabilitation and adaption to my disability. The boost in confidence that physical activity brings is remarkable. Being able to ski on specialized limbs changed my life. My attitude and mood improved dramatically, and I began to excel at school, eventually attending college and law school. My experience is shared by many people with limb loss or limb difference who simply wish to remain active, healthy, and participate in physical activities after their loss of function due to illness or injury.

Today, I am Managing Partner of the Powers Law Firm in Washington, DC, and serve as both general counsel to the National Association for the Advancement of Orthotics and Prosthetics and counsel to a coalition of orthotic and prosthetic associations known as the O&P Alliance. My wish is that enactment of S.B. 614 in Maryland will permit individuals like me to achieve the level of activity they desire, whether that is for the purpose of health and fitness, routine exercise, participation in community activities, or even athletic competition.

The fact is that health insurance programs and plans view “medical necessity” in the narrowest of terms and only grant coverage of prosthetic limbs and custom orthoses to perform simple activities of daily living such as walking (for a lower limb amputee) or manipulating objects (for an upper limb amputee). S.B. 614 would effectively change this restrictive interpretation of medical necessity as it applies to custom orthotics and prosthetics by acknowledging that individuals with limb loss and limb difference have a wide variety of functional needs that vastly exceed simple locomotion and dexterity, all of which should be considered medically necessary.

Passage of S.B. 614 would accomplish major advances for individuals with limb loss and limb difference who rely on custom orthoses and prostheses to function. Effective January 1, 2025, the bill would:

1. Require health plans operating in Maryland to cover prosthetic limbs and custom orthoses deemed medically necessary by the treating physician in order to (i) complete activities

of daily living, (ii) perform essential job functions, or (iii) perform physical activities to maximize whole-body health and upper and lower limb function;

2. Require that a wide range of decision-making by health plans is non-discriminatory, consistent with federal law;
3. Require replacements of prostheses or custom orthoses without respect to “useful lifetime” restrictions if it is medically necessary to do so; and,
4. Define “prosthesis” and “orthosis” for clarity of coverage.

All of these provisions of the bill would be outstanding improvements over current law in Maryland, the reasons for which are highlighted below.

Coverage: The bill would establish coverage for custom orthoses and prostheses to accomplish several purposes, including simple ambulation from one place to another for lower limb amputees and the ability to manipulate objects to perform activities of daily living for upper limb amputees. Coverage is also required to assist with performance of job functions, which could be extremely cost effective and promotes return to work following injury or illness rather than reliance on public assistance.

Finally, the bill establishes coverage for activity-specific prostheses and custom orthoses to enable participation in health and fitness and other activities that are routine aspects of all individuals’ lives. All of these functions are medically necessary and the bill recognizes this explicitly. Coverage of prosthetic and custom orthotic care for these purposes will greatly improve the ability of Marylanders with limb loss and limb difference to recover, rehabilitate, function, and remain active and healthy well past their injury or illness that led to limb loss or limb difference.

There are three important points that pertain to the *activity-specific prosthetic and custom orthotic coverage requirement* in the bill.

1. Coverage of orthoses is confined to “custom” orthoses. This distinguishes this requirement from covering off-the-shelf or pre-fabricated orthoses which are much more common than activity-specific devices. This restricts this coverage requirement to individuals who truly need a custom orthoses to perform physical activities and this should help limit the cost of this provision. An example of a custom orthosis required to perform physical activity would be a specialized knee brace or custom knee-ankle-foot-orthosis to increase strength in a weak or malformed limb while performing rigorous physical activity. This also contributes to the safety of the individual while performing these activities.
2. The text of the coverage provision, as written, does not specifically state that a prosthesis or custom orthoses for the performance of specific physical activities is usually separate and distinct from a limb or brace for purposes of performing activities of daily living. Rarely does a simple walking limb or a custom orthosis satisfy the requirements to perform physical activities safely and effectively. The bill should make clear that health

plans are required to provide both a walking limb and a separate limb—both a custom orthosis for activities of daily living and a separate custom orthosis—if medically necessary, to perform specific job functions or physical activities in which the individual participates.

3. No defrayal by the State of the expense for this provision is necessary because orthotic and prosthetic benefits are already covered under the federal essential health benefits package under the category of “rehabilitative and habilitative services and devices.” This provision simply clarifies that the types of prostheses and orthoses detailed in the legislation are now—and always should have been—considered medically necessary.

Non-Discrimination: Although most of the non-discrimination provisions listed in the legislation derive from federal law, it is important that the State of Maryland reiterate their applicability to the coverage section of this bill pertaining to custom orthotic and prosthetic benefits. Particularly important provisions include:

- A prohibition on higher copayments or other financial arrangements;
- No annual or lifetime caps specific to the prosthetic or custom orthotic benefit;
- No coverage and medical necessity limitations less than those established under the Medicare program;
- No discriminatory utilization review or denial of benefits based on the individual’s actual or perceived disability;
- No discrimination compared to non-disabled individuals’ need for medical or surgical interventions;
- Choice of at least two orthotic or prosthetic providers within each plan’s network; and,
- Out-of-network provider protections.

Useful Lifetime: The provisions in the bill that require the health plan to cover replacement orthoses or prostheses without regard to the useful lifetime restrictions of the Medicare program are an important protection that will assist individuals in gaining continued access to care when deemed medically necessary by the ordering health care provider. Some payers, such as Medicare, prohibit coverage of a new orthosis if the existing orthosis needs to be replaced within three years of initial use. The Medicare program exempts prosthetics from the useful lifetime requirement and covers replacements when medically necessary, i.e., the patient has a change in his or her physiological condition, there is an irreparable change in the condition of the prosthesis, or when repairs would not be cost-effective compared to a new prosthesis or prosthetic component. The useful lifetime provision in this legislation would ensure that all prostheses and orthoses are able to be replaced when the ordering provider determines it is medically necessary, regardless of the useful lifetime of the prosthesis or orthosis. It is an important provision that should be included in the final legislation.

Definitions: The definitions of “prosthesis” and “orthosis” in the bill simply help clarify exactly what this legislation addresses and will lead to greater consistency and understanding of the orthotic and prosthetic benefit under state law.

Thank you for the opportunity to testify on this important legislation. As a Maryland resident and a near-lifelong user of prostheses, I strongly urge you to enact this legislation.