



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 15, 2024

The Honorable Joseline Peña-Melnyk
Chair, Health and Government Operations Committee
Room 241, House Office Building
Annapolis, Maryland 21401

RE: House Bill 865 - Maryland Medical Assistance Program and Health Insurance – Coverage for Orthoses and Prostheses - Letter of Information

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of information for House Bill (HB) 865 – Maryland Medical Assistance Program and Health Insurance – Coverage for Orthoses and Prostheses.

HB 865 will result in a fiscal impact to the Department of \$697.86 million total funds (\$232.35 million in state general funds and \$467.09 million in federal funds) for five years from fiscal year (FY) 2025 through FY 2029.

HB 865 requires the Medical Assistance Program to provide coverage to include orthoses/prostheses if a physician determines a device is medically necessary for completing activities of daily living, essential job activities, or performing physical activities related to ‘whole-body health,’ such as swimming and running, in addition to covering orthoses/prostheses for cosmetic purposes. The bill further requires the Medical Assistance Program to make certain changes with respect to coverage, replacement, and utilization management of orthoses/prostheses by bringing coverage into alignment with Medicare and permitting more frequent replacements under certain circumstances. The bill also establishes certain provider network adequacy requirements.

In FY 2022, the Department reimbursed \$3,441,090.69 in orthoses/prostheses claims for 6,346 Medicaid fee-for-service (FFS) participants, and \$16,235,154.27 in claims for 53,503 HealthChoice participants.

Coverage of DME/DMS for ‘Whole-Body Health’ and Cosmetic Reasons

Federal requirements

The bill requires the Medical Assistance Program to cover orthoses/prostheses for the purpose of participating in certain physical activities related to ‘whole-body health,’ such as swimming and running, in addition to covering orthoses/prostheses for cosmetic purposes. The Department notes that pursuant to §1862(a)(1)(A) of the Social Security Act, the Medical Assistance Program cannot qualify for federal matching dollars when a service is not reasonable and

necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body part. It remains unclear whether the Centers for Medicare and Medicaid Services (CMS) would deem orthoses/prostheses for ‘whole-body health’ eligible for federal matching dollars. In the event that the requested devices do not meet the medical necessity requirements under the Social Security Act, payment with 100% state general funds would be required.

FFS Impact

To ensure appropriate drawdown of federal dollars, the FFS claims requiring Utilization Control Agent (UCA) review would increase by 95%. Additionally, the Department assumes that the UCA would also review additional claims due to the ‘whole-body health’ expansion. As a result of these expanded UCA reviews, there will be a fiscal impact of \$12.34 million total funding (\$3.08 million in state general funds, \$9.25 million in federal funds) over 5 years from FY 2025 through FY 2029.

There will also be a substantial fiscal impact to cover ‘whole-body health’ orthoses/prostheses. The manufacturer's suggested retail price (MSRP) for ‘whole-body health’ orthoses/prostheses is approximately \$60,000. As per the State Plan, the Medical Assistance Program reimburses for customizable durable medical equipment (DME) without a Medicare rate at 30% less than the MSRP resulting in an estimated cost per FFS participant of \$42,000. Assuming an uptake rate of 5% among the FFS population, there would be a fiscal impact of \$70.75 million total funds (\$35.38 million in state general funds, \$35.38 million in federal funds) over 5 years from FY 2025 through FY 2029.

MCO Impact

The Department assumes that 5% of the 53,503 HealthChoice enrollees currently receiving DME will receive coverage for ‘whole-body health’ orthoses/prostheses at a cost of \$42,000/person. As a result, there will be a fiscal impact of \$596.51 million total funds (\$187.99 million in state general funds, \$410.10 million in federal funds) over 5 years from FY 2025 through FY 2029.

Expanding MCO Coverage for Additional Medicare Reimbursed Services & Changes to Prior Authorization Requirements

The Department notes that the Medicaid FFS coverage aligns with the Medicare DME coverage requirements. However, MCOs do not currently cover 87 ‘L’ codes that are covered under FFS and Medicare. Healthcare Common Procedure Coding System (HCPCS) ‘L’ codes are used by providers to bill the Medical Assistance Program for Orthotic and Prosthetic Procedures and Devices, which are considered DME. Conservatively, the Department estimates that there will be a 20% increase in utilization by MCO participants if coverage for the 87 new ‘L’ codes and changes to prior authorization standards are required, costing the Department \$17.24 million total funds (\$5.39 million in state general funds, \$11.85 million in federal funds) over 5 years from FY 2025 through FY 2029.

Finally, the Department notes that the mandatory changes to utilization management policies required under this legislation may have a more substantial fiscal impact due to costs associated

with requests for new orthoses/prostheses or their replacements based on accidents, changes in physiology, and costs of repairs.

The Department is committed to working with the Committee to determine whether there are amendments that can be made to limit the fiscal and operational impacts of HB 865.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at sarah.case-herron@maryland.gov or (410) 260-3190.

Sincerely,

A handwritten signature in blue ink, appearing to read "LH Scott". The signature is fluid and cursive.

Laura Herrera Scott, M.D., M.P.H.
Secretary