

Prosthesis: 60-month reopening petition

LMAC MEETING NOVEMBER 26, 2019

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LABOR & INDUSTRY

Recap from the 10.17.19 meeting

Discussed the need to define the term “prosthesis” in terms of the 60-month reopening petition

- Reviewed relevant workers’ compensation court decisions
- Highlighted medical necessity for definition using case example

Reviewed the proposed prosthesis language



Purpose today

Restate the medical necessity for a broader definition of prosthesis

Summarize relevant prosthesis definitions

Review the proposed definition

Provide the opportunity for discussion

**How did defining
“prosthesis” arise in the
medical context of the 60-
month petition process?**



Petitions & 39-71-717 MCA

Compass for the decision to reopen benefits

39-71-717. Reopening of terminated medical benefits – medical review.

(2) Medical benefits may be reopened only if the worker's medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work. Medical benefits closed by settlement or court order are not subject to reopening.



Petitions & the “39-71-717 MCA test”

39-71-717. Reopening of terminated medical benefits – medical review.



Claim-related occupational injury or disease



Ongoing care is medically appropriate to provide partial replacement of a permanently lost function



Injured worker expresses an intent to return to work

Per 39-71-717 MCA, the worker is no longer eligible for medical benefits at the 60-month mark



Montana Utilization and Treatment Guidelines

Effective Date

July 1, 2019

Presented by:

State of Montana

**Department of Labor and Industry
EMPLOYMENT RELATIONS DIVISION**

Core principle: Return to function



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Proposed prosthesis language

24.29.1407 PROSTHETIC DEVICES (1) For the purposes of identifying what constitutes a prosthesis not subject to the automatic 60-month closure of medical benefits under 39-71-704, MCA, the term "prosthesis" means, with respect to a body part or organ missing or damaged as the direct result of a workplace accident or occupational disease:

- (a) an artificial substitute to replace that body part or organ; or
- (b) a device to augment the functioning of that body part or organ.

(2) Examples of a prosthetic device include, but are not limited to:

- (a) an artificial joint;
- (b) an artificial eye;
- (c) an artificial limb; and
- (d) an artificial tooth.

(3) Examples of a prosthetic device that augments function include, but are not limited to:

- (a) prescription eye glasses;
- (b) prescription contact lenses;
- (c) dentures; and
- (d) hearing aids.



Summary of state prosthesis definitions



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Summary of prosthesis definitions across states

Prosthesis defined

Florida, Michigan, Texas, Washington

No definition, but addressed in the fee schedule or otherwise covered

California, Nevada, New York, North Dakota, Utah, Alabama, Idaho, & Arizona

“Prosthetic” not defined by statute or rule, but used in statute

Colorado, Virginia, & Indiana

Not defined by state, default to Medicare

Tennessee

Prosthesis mentioned in the context of injury

Alabama	Admin Code 480-5-5-.02(37). Injury Definition. “Injury shall include physical injury covered either by carpal tunnel syndrome or other cumulative trauma disorder and <u>breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices</u> when injury to them is caused by an on-the-job injury to the body.”
Idaho	72-432. Medical Services, Appliances and Supplies (2) The <u>employer shall also furnish necessary replacements or repairs of appliance and prostheses, unless the need therefor is due to lack of proper care by the employee.</u> If the appliance or prosthesis is damaged or destroyed in an industrial accident, the employer, for whom the employee was working at the time of accident, will be liable for replacement or repair, but not for any subsequent replacement or repair not directly resulting from the accident.
Indiana	“Artificial braces and devices are to be provided by the employer when the work accident claim has been accepted. This <u>includes instances where the injured worker already had a prosthetic part that was damaged or destroyed in the accident.</u> Thereafter, replacements or necessary repairs for normal wear and tear will be paid out of the Second Injury Fund.”



Prosthesis mentioned in terms of benefits

Georgia	<p>“Effective July 1, 2019, an employee’s medical treatment is still capped at 400 weeks, unless the injury is deemed to be “catastrophic,” a designation reserved for the most serious of injuries. However, <u>if the injured worker receives a durable medical device or equipment, including a prosthetic, spinal cord stimulator or pain pump within the initial 400 weeks, they are entitled to replacement and maintenance of the item for life.</u>” The “400-week cap does not apply to the “care, treatment, services, and items” related to the ongoing “maintenance, repair, revision, replacement, or removal” of (1) prosthetic devices, (2) spinal cord stimulators, (3) intrathecal pump devices, (4) durable medical equipment, (5) orthotics, (6) corrective eyeglasses, and (7) hearing aids, when those items are prescribed by the authorized treating physician and originally provided within 400 weeks of the date of injury.”</p>
Utah	<p>“Medical benefits cease if you do not incur medical expenses reasonably related to your accident and submit those expense for a period of three consecutive years. <u>This does not apply to prosthetic devices or to permanent total disability.</u>”</p>
Wisconsin	<p>Occupational Deafness. Benefits are payable if prolonged exposure to noise causes permanent partial or total loss of hearing. <u>Eye glasses and hearing aids may be replaced only when a personal injury entitles the employee to medical treatment or payment of workers compensation benefits.</u> If a pair of glasses drops to the floor, with no personal injury, there is no payment or replacement.</p>



Prosthesis mentioned in terms of benefits

Colorado	Workers' Compensation Act "In all cases where the injury results in the loss of a member or part of the employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer shall furnish within the limits of the medical benefits provided in paragraph (a) of this subsection (1) <u>one artificial member, glasses, a hearing aid, a brace, and any other external prosthetic device, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the employee's vision or hearing.</u> "
New York	Article 2, Section 13(a) Treatment and care of injured employees. "The employer shall promptly provide for an injured employee such <u>medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus</u> for such period as the nature of the injury or the process of recovery may require."
Virginia	§ 65.2-603. Duty to furnish medical attention, etc., and vocational rehabilitation; effect of refusal of employee to accept. (1) As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician chosen by the injured employee...and such other necessary medical attention. <u>Where such accident results in the amputation or loss of use of an arm, hand, leg, or foot or the enucleation of an eye or the loss of any natural teeth or loss of hearing, the employer shall furnish prosthetic or orthotic appliances, as well as wheelchairs, walkers, canes, or crutches, proper fitting and maintenance thereof, and training in the use thereof, as the nature of the injury may require.</u>



Prosthesis definitions

Florida	The Florida Supreme Court defined a prosthetic device as <u>“an artificial substitute or replacement, whether external or implanted, for a missing or defective natural part of the body which serves a relatively permanent functional or cosmetic purpose.”</u> Cash v. Univ. Rivet, 616 So.2d 446, 448 (Fla. 1996).
Oregon	436-009-0080 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) “A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. Examples: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc.
Michigan	Rule 418.10109(o) "Prosthesis" means an artificial substitute for a missing body part. A prosthesis is constructed by a "prosthetist", a person who is skilled in the construction and application of a prosthesis.
Texas	§401.011(35-a). Prosthetic device means an artificial device designed to replace, wholly or partly, an arm or leg.
Washington	WAC 182-500-0085 – “Washington: "Prosthetic device" means a preventive, replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner, within the scope of his or her practice under state law.”

Montana, Department of Public Health and Human Services

MCA 2019

53-7-101. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.



Summary

Return to and maintenance of function are cornerstones of the Montana Utilization and Treatment Guidelines

The ongoing need for maintenance/repair of a prosthetic device is well-accepted in the medical community

Adopting a broader definition of prosthesis is consistent with Montana's approach to medical care for injured and ill workers and is also consistent with the legislative intent

The proposed prosthesis definition is coherent with other Montana and regional definitions

Works cited & resources

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