

1 **H. R./S. ____**

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3 To amend title XVIII of the Social Security Act to recognize orthotic and prosthetic
4 suppliers as independent professional providers of medical care for Medicare
5 beneficiaries, to improve the Medicare administrative appeals process, and for other
6 purposes.
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9 **IN THE HOUSE OF REPRESENTATIVES**

10 _____, 2014

11
12 **A BILL**

13
14 To amend title XVIII of the Social Security Act to recognize orthotic and prosthetic
15 suppliers as independent professional providers of medical care for Medicare
16 beneficiaries, to improve the Medicare administrative appeals process, and for other
17 purposes.
18

19 *Be it enacted by the Senate and House of Representatives of the United States of*
20 *America in Congress assembled,*
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22 **SEC. 1. SHORT TITLE, TABLE OF CONTENTS.**

23 (a) **SHORT TITLE.** This Act may be cited as the “Ensuring Beneficiary Access to
24 Orthotics and Prosthetics Act of 2014.”

25 (b) **TABLE OF CONTENTS.** The Table of Contents for this Act is as follows:

26 Sec. 1. Short title, table of contents.

27 Sec. 2. Orthotist’s and prosthetist’s clinical notes as part of the patient’s
28 medical record.

29 Sec. 3. Clarification that orthotist and prosthetist documentation have
30 same standing as other health care professionals.

31 Sec. 4. Distinguishing orthotists and prosthetists from suppliers of durable
32 medical equipment and supplies.

33 Sec. 5. Ensuring payment for items and services provided to Medicare
34 beneficiaries.

35 Sec. 6. Ensuring timely disposition of Medicare appeals.

36 Sec. 7. Determining whether an item of service is reasonable and
37 necessary for purposes of payment.

1 Sec. 8. Permitting enforcement of the requirements and restrictions on
2 reopening Medicare claims.

3 Sec. 9. Limitation on recoupment through the decision by an
4 administrative law judge.

5 Sec. 10. Greater accountability and transparency of Recovery Audit
6 Contractors.

7 Sec. 11. Application of delay to Medicare review contractors

8 Sec. 12. Effective date.

9 Sec. 13. Regulations.

10 **SEC. 2. ORTHOTIST’S AND PROSTHETIST’S CLINICAL NOTES AS**
11 **PART OF THE PATIENT’S MEDICAL RECORD.**

12 Section 1834(h) of the Social Security Act (42 U.S.C. § 1395m(h)) is amended by adding
13 at the end the following new section:

14 “(5) Patient medical record. For purposes of section 1833, a detailed written
15 order for orthotics or prosthetics (as defined in subsection (o)) or another record
16 created by a supplier of prosthetic devices and orthotics and prosthetics shall be
17 considered part of the patient’s medical record with regard to medical and
18 functional information necessary to determine whether such items and services
19 are covered under section 1861, without regard to whether such record bears the
20 signature of a physician or other practitioner.”

21 **SEC. 3. CLARIFICATION THAT ORTHOTISTS’ AND PROSTHETISTS’**
22 **DOCUMENTATION HAS SAME STANDING AS**
23 **DOCUMENTATION OF OTHER HEALTH CARE**
24 **PROFESSIONALS.**

25 Section 1834(h) of the Social Security Act (42 U.S.C. § 1395m(h)) is amended by adding
26 at the end the following new section:

27 “(6) Orthotist and Prosthetist Documentation. When determining whether claims
28 for items and services that are paid pursuant to this subsection are appropriate
29 under section 1862, the Secretary will give documentation created by licensed
30 and/or certified orthotists and prosthetists the same weight as the documentation
31 of other health care professionals.”

1 **SEC. 4. DISTINGUISHING ORTHOTISTS AND PROSTHETISTS FROM**
2 **SUPPLIERS OF DURABLE MEDICAL EQUIPMENT AND**
3 **SUPPLIES.**

4 (a) REQUIREMENTS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.

5 Section 1834(j)(5) of the Social Security Act (42 U.S.C. § 1395m(j)(5)) is amended
6 by striking “(C) orthotics and prosthetics (as described in section 1861(s)(9));”.

7 (b) CREATION OF NEW SECTION ON REQUIREMENTS FOR ORTHOTISTS AND
8 PROSTHETISTS. Section 1834 of the Social Security Act (42 U.S.C. § 1395m) is
9 amended by adding at the end the following new section:

10 “(o) Requirements for Orthotists and Prosthetists.

11 “(1) Issuance and renewal of supplier number.

12 “(A) Payment. No payment may be made under this part to an orthotic
13 or prosthetic supplier unless such orthotic or prosthetic supplier obtains
14 (and renews at such intervals as the Secretary may require) a supplier
15 number; provided, however, that providers otherwise permitted to receive
16 payment for orthotics and prosthetics under Part A may continue to
17 receive such payment without interruption.

18 “(B) Standards for possessing a supplier number. An orthotic and/or
19 prosthetic supplier may not obtain a supplier number unless the supplier
20 meets standards prescribed by the Secretary that include requirements that
21 the orthotic/prosthetic supplier (and, where applicable, the orthotist or
22 prosthetist)—

23 “(i) comply with all applicable State and Federal licensure and
24 regulatory requirements;

25 “(ii) acquire accreditation from the American Board for
26 Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC) or
27 the Board of Certification/Accreditation, International (BOC), or other
28 accreditation entity deemed by the HHS Secretary to have standards
29 that are essentially equivalent to such boards;

30 “(iii) maintain a physical facility on an appropriate site;

31 “(iv) have proof of appropriate liability insurance; and

32 “(v) meet such other requirements as the Secretary shall specify.

1 “(C) Prohibition against multiple supplier numbers. The Secretary
2 may not issue more than one supplier number to any orthotic and/or
3 prosthetic supplier unless the Secretary finds that the issuance of more
4 than one number is appropriate to identify other entities under the
5 orthotic/prosthetic supplier’s ownership or control.

6 “(2) Order for orthotics or prosthetics.

7 “(A) Information provided by orthotists and prosthetists on detailed
8 orders for orthotics and prosthetics. An orthotist or prosthetist may
9 distribute to physicians, or to an individual entitled to benefits under this
10 part, a detailed written order for orthotics or prosthetics (as defined in
11 paragraph (4)) for commercial purposes that contains the following
12 information:

13 “(i) An identification of the orthotic or prosthetic supplier and the
14 beneficiary to whom such orthotics or prosthetics are furnished;

15 “(ii) An identification of the treating physician, including the
16 name, address, and telephone number;

17 “(iii) A description of such orthotics or prosthetics;

18 “(iv) Any billing code identifying such orthotics or prosthetics;

19 “(v) Diagnosis codes, a description of the beneficiary’s medical
20 and functional condition, and information about the need for the
21 orthotics or prosthetics; and

22 “(vi) Any other administrative information identified by the
23 Secretary.

24 “(B) Information on coding and descriptors of components provided.
25 If an orthotist or prosthetist distributes a detailed written order for
26 orthotics or prosthetics, the orthotist or prosthetist also shall list on the
27 order the HCPCS codes and summary descriptors of the items and services
28 being recommended prior to distribution of such order to the treating
29 physician.

30 “(C) A detailed written order for orthotics or prosthetics must be
31 signed by the treating physician.

1 “(3) Limitation on patient liability. If an orthotist or prosthetist—

2 “(A) furnishes an orthotic or prosthetic to a beneficiary for which no
3 payment may be made under this part; or

4 “(B) subject to section 1879, furnishes an orthosis or prosthesis to a
5 beneficiary for which payment is denied under section 1862(a)(1) of this
6 title;

7 any expenses incurred for such orthotics or prosthetics furnished to an
8 individual by the orthotist or prosthetist not on an assigned basis shall be the
9 responsibility of such orthotist or prosthetist. The individual shall have no
10 financial responsibility for such expenses and the orthotist or prosthetist shall
11 refund on a timely basis to the individual (and shall be liable to the individual
12 for) any amounts collected from the individual for such items and services.
13 The provisions of subsection (a)(18) of this section shall apply to refunds
14 required under the previous sentence in the same manner as such provisions
15 apply to refunds under such subsection.

16 “(4) Patient liability. If an orthotist or prosthetist furnishes an orthotic or
17 prosthetic to a beneficiary for which payment is denied in advance under
18 subsection (a)(15) of this section, expenses incurred for such orthotic or
19 prosthetic furnished to the beneficiary by the orthotist or prosthetist shall be
20 the responsibility of the beneficiary.

21 “(5) Definitions. For purposes of this paragraph—

22 “(A) “Orthotist or prosthetist” shall mean an individual who is
23 specifically trained and educated in the provision of, and patient care
24 management related to, prosthetics and custom-fabricated or custom-fit
25 orthotics, and—

26 “(i) in the case of a State that provides for the licensing of
27 orthotists and prosthetists, is licensed by the State in which the
28 orthotics or prosthetics were supplied; or

29 “(ii) in the case of a State that does not provide for the licensing of
30 orthotists and prosthetists, is certified by the American Board of
31 Certification in Orthotics, Prosthetics and Pedorthics, Inc. or by the

1 Board of Certification/Accreditation, International, or certified and
2 approved by a program that the Secretary determines has certification
3 and approval standards that are essentially equivalent to those of such
4 Boards listed in this subsection.

5 “(B) “Orthotics and prosthetics” shall have the meaning given such
6 term in 1834(h)(4)(C).

7 “(C) “Detailed Written Order for orthotics or prosthetics” shall mean a
8 form or other document prepared by an orthotist or prosthetist and signed
9 by the physician (as defined by section 1861(r) of the Social Security Act)
10 that contains information required by the Secretary to be submitted to
11 show that an orthotic or prosthetic is reasonable and necessary for the
12 treatment of an illness or injury or to improve the functioning of a
13 malformed body member.

14 (c) DEFINITION OF ORTHOTICS AND PROSTHETICS

15 SYNONYMOUS WITH “ORTHOSES AND PROSTHESES”. Section
16 1834(h)(4)(C) of the Social Security Act (42 U.S.C. § 1395) is amended by adding “,
17 as may be alternatively referred to without distinction as ‘orthoses and prostheses’,”
18 after “the term ‘orthotics and prosthetics’”.

19 (d) CLARIFICATION OF COMPETITIVE ACQUISITION FOR OFF-THE-
20 SHELF ORTHOTICS. Section 1847(a)(7)(A)(i) (42 U.S.C. § 1395(a)(7)(A)(i)) is
21 amended by adding “, licensed and/or certified orthotist or prosthetist,” after “by a
22 physician”.

23
24 **SEC. 5. ENSURING PAYMENT FOR ITEMS AND SERVICES PROVIDED**
25 **TO MEDICARE BENEFICIARIES.**

26 Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the
27 following:

28 “(5) Notwithstanding section 1862, in the case where payment for an orthotic
29 or prosthetic is denied or recouped pursuant to section 1893, the supplier
30 of the orthotic or prosthetic may resubmit the claim for payment for items
31 and services that are not subject to the denial or recoupment.”

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SEC. 6. ENSURING TIMELY DISPOSITION OF MEDICARE APPEALS.

(a) OPTION TO REQUEST HEARING BY THE SECRETARY WITHOUT RECONSIDERATION OF INITIAL DETERMINATION. Section 1869(b) of the Social Security Act (42 U.S.C. § 1395ff(b)) is amended by adding at the end the following new subparagraph:

“(H) For initial determinations concluded on or after January 1, 2014, any individual that is dissatisfied with any initial determination under subsection (a)(1) may, subject to subparagraphs (D) and (E), request a hearing by the Secretary without undergoing a reconsideration of the initial determination.”

(b) PROMPT DETERMINATIONS BY ADMINISTRATIVE LAW JUDGES. Section 1869(d)(3)(A) of the Social Security Act (42 U.S.C. § 1395ff(d)(3)(A)) is amended by:

(1) Redesignating the sentence after “HEARING BY ADMINISTRATIVE JUDGE” as clause (i); and

(2) Inserting after (i) the following clause:

“(ii) In the case of a provider of services or a supplier that furnishes an item or service that has requested a hearing by the Secretary because of an unfavorable determination by a Medicare contractor (as defined in section 1889(g)), an administrative law judge’s failure to render a decision by the end of the period described in paragraph (1) will result in a determination in favor of the provider or supplier and the recovery being refunded to the provider or supplier. The determination will constitute a final determination and will not be subject to administrative and judicial review by the Secretary.”

(c) ENSURING PROMPT DETERMINATIONS BY ADMINISTRATIVE LAW JUDGES. Section 1893(h)(1)(C) of the Social Security Act (42 U.S.C. § 1395ddd(h)) is amended by adding the following at the end:

1 “and also shall be available to fund hearings by the Secretary under
2 section 1869(d).”
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4 **SEC. 7. DETERMINING WHETHER AN ITEM OR SERVICE IS**
5 **REASONABLE AND NECESSARY FOR PURPOSES OF**
6 **PAYMENT**

7 Section 1862(a)(1) of the Social Security Act (42 U.S.C. § 1395y(a)(1)) is amended by
8 adding at the end the following:

9 “(Q) In determining the reasonableness and necessity of an item or service for
10 purposes of payment under this Title, the available medical record as a whole
11 shall be considered. Failure of a provider or supplier to satisfy all documentation
12 requirements established by the Secretary shall not serve as the sole grounds for
13 determining that an item or service for which payment would otherwise be made
14 is not reasonable and necessary.”
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16 **SEC. 8. PERMITTING ENFORCEMENT OF THE REQUIREMENTS AND**
17 **RESTRICTIONS ON REOPENING CLAIMS**

18 Section 1869(a)(1) of the Social Security Act (42 U.S.C. § 1395ff(a)(1)) is amended by
19 adding at the end the following:

20 “(D) The initial determination that a claim was reopened in accordance with the
21 requirements and restrictions set forth at 42 C.F.R. Part 405, Subpart H, including
22 any and all time-based restrictions on reopening and requirements for good cause
23 to be shown.”
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25 **SEC. 9. LIMITATION ON RECOUPMENT THROUGH THE ISSUANCE**
26 **OF A DECISION BY AN ADMINISTRATIVE LAW JUDGE**

27 Section 1893(f)(2)(A) of the Social Security Act (42 U.S.C. § 1395ddd(f)(2)(A)) is
28 amended to read as follows:

29 “(A) IN GENERAL.—In the case of a provider of services or supplier that is
30 determined to have received an overpayment under this title and that seeks a
31 redetermination, a reconsideration, or a hearing by an administrative law judge on

1 such determination under section 1869, the Secretary may not take any action (or
2 authorize any other person, including any Medicare contractor, as defined in
3 subparagraph (C)) to recoup the overpayment until the date the decision on the
4 hearing by an administrative law judge (or earlier level of review if the provider
5 does not exercise the next level of appeal) has been rendered.”

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7 **SEC. 10. GREATER ACCOUNTABILITY AND TRANSPARENCY OF**
8 **RECOVERY AUDIT CONTRACTORS**

9 Section 1893(h) of the Social Security Act (42 U.S.C. § 1395ddd(h)) is amended by
10 adding at the end the following:

11 “(11) PUBLIC REPORTING OF RECOVERY AUDIT CONTRACTOR
12 PERFORMANCE. With respect to each recovery audit contractor with a
13 contract under this section for a contract year--

14 (A) The Secretary shall publish on the Internet website of the Centers for
15 Medicare & Medicaid Services the following information with respect
16 to the performance of each such recovery audit contractor:

17 (A) Audit rates.

18 (B) Appeals outcomes rates at each stage of the appeals process
19 under section 1869.

20 (B) When compiling and publicly reporting the information described in
21 subparagraph (A), the Secretary shall create separate categories of
22 providers and suppliers including a separate category for orthotics and
23 prosthetics instead of aggregating orthotics and prosthetics with
24 durable medical equipment and supplies.”

25 “(12) PENALTY FOR EXCESSIVE OVERTURNED APPEALS. With respect
26 to each recovery audit contractor with a contract under this section, each such
27 contract shall provide for the reduction of payments to the recovery audit
28 contractor under paragraph (1) by one-half for each category of providers or
29 suppliers (e.g., orthotic/prosthetic suppliers; durable medical equipment
30 suppliers, etc.) if 25 percent or more of the recovery audit contractor’s
31 recoupments in that category are overturned on appeal.

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2 **SEC. 11. APPLICATION OF DELAY TO MEDICARE REVIEW**
3 **CONTRACTORS.—**

4 (A) IN GENERAL.—this delay shall apply to Medicare review contractors (as
5 defined in subparagraph (B)). No Medicare review contractor may deny a claim
6 for payment of an orthotic or prosthetic furnished by a properly certified or
7 licensed and/or accredited supplier for which payment may be made under title
8 XVIII of the Social Security Act—

9 (i) for medical necessity as established between a certified or licensed
10 orthotic and/or prosthetic supplier and the physician’s order under which
11 such supplier is acting;

12 (ii) from January 1, 2014 until such time as the Chief Judge of the HHS
13 Office of Medicare Hearing and Appeals determines that Administrative
14 Law Judge decisions are being issued in accordance with the time
15 limitations established under Section 1869(d)(1) of the Social Security
16 Act.

17 (B) MEDICARE REVIEW CONTRACTOR DEFINED.—In subparagraph (A),
18 the term “Medicare review contractor” means any contractor or entity that has
19 entered into a contract or subcontract with the Centers for Medicare & Medicaid
20 Services with respect to the Medicare program to review claims for items and
21 services furnished for which payment is made under title XVIII of the Social
22 Security Act, including—

23 (i) Medicare administrative contractors under section 1874A of the Social
24 Security Act (42 U.S.C. 1395kk–1); and

25 (ii) entities operating under the authority of section 1893 of such Act (42
26 U.S.C. 1395ddd).

27
28 **SEC. 12. EFFECTIVE DATE**

29 The provisions of this Act will be effective on the date of enactment.
30

1 **SEC. 13. REGULATIONS.**

2 No later than 120 days after enactment of this Act, the Secretary shall promulgate
3 regulations to implement the provisions herein.