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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. 1526

To amend title XVIII of the Social Security Act to modify policies relating to payment under the Medicare program for durable medical equipment, orthotics and prosthetics, and prosthetic devices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MEADOWS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to modify policies relating to payment under the Medicare program for durable medical equipment, orthotics and prosthetics, and prosthetic devices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Audit Im-
5 provement Act of 2015”.

1 **SEC. 2. MEDICARE PAYMENT FOR DURABLE MEDICAL**
2 **EQUIPMENT, ORTHOTICS AND PROSTHETICS,**
3 **AND PROSTHETIC DEVICES.**

4 (a) USE OF PROSTHETIST AND ORTHOTIST NOTES
5 FOR DETERMINATIONS OF MEDICAL NECESSITY.—Sec-
6 tion 1834(h)(1) of the Social Security Act (42 U.S.C.
7 1395m(h)(1)) is amended by adding at the end the fol-
8 lowing new subparagraph:

9 “(I) USE OF PROSTHETIST AND
10 ORTHOTIST NOTES FOR DETERMINATIONS OF
11 MEDICAL NECESSITY.—In determining under
12 section 1862(a)(1) whether an orthotic or pros-
13 thetic or prosthetic device furnished to an indi-
14 vidual on or after the date of the enactment of
15 this subparagraph is reasonable and necessary,
16 any records or documentation of an orthotist or
17 prosthetist who furnished such orthotic or pros-
18 thetic or prosthetic device to such individual
19 shall be considered part of the medical record
20 of the individual.”

21 (b) AUTHORIZING MAC AND RAC REVIEW FOR SUP-
22 PLIER LICENSE OR ACCREDITATION FOR DURABLE MED-
23 ICAL EQUIPMENT AND ORTHOTICS AND PROSTHETICS.—

24 (1) MAC REVIEW.—Section 1874A(a)(4)(A) of
25 the Social Security Act (42 U.S.C. 1395kk-
26 1(a)(4)(A)) is amended by inserting “, including de-

1 termining that payment shall not be made to a sup-
2 plier of durable medical equipment, or of orthotics
3 and prosthetics, for which a claim for payment is
4 made on or after the date of the enactment of the
5 Medicare Audit Improvement Act of 2015 on ac-
6 count of the application of section 1834(h)(1)(F)
7 (relating to supplier licensing or accreditation by a
8 National Board)” before the period at the end.

9 (2) RAC REVIEW.—Section 1893(h) of the So-
10 cial Security Act (42 U.S.C. 1395ddd(h)) is amend-
11 ed by adding at the end the following new para-
12 graph:

13 “(10) REVIEW OF SUPPLIER LICENSE OR AC-
14 CREDITATION FOR DURABLE MEDICAL EQUIPMENT
15 AND ORTHOTICS AND PROSTHETICS.—For purposes
16 of paragraph (1), with respect to durable medical
17 equipment and orthotics and prosthetics for which a
18 claim for payment was made by a supplier in 2011
19 or a subsequent year, a payment that should not
20 have been made to such supplier for such durable
21 medical equipment or such orthotics and prosthetics
22 on account of the application of section
23 1834(h)(1)(F) (relating to supplier licensing or ac-
24 creditation by a National Board) shall be considered
25 an overpayment under this title.”.

1 (c) EXEMPTING SERVICES THAT RECEIVE PRIOR
2 AUTHORIZATION FROM RAC REVIEW.—Section 1893(h)
3 of the Social Security Act (42 U.S.C. 1395ddd(h)), as
4 amended by subsection (b)(2), is further amended—

5 (1) in paragraph (1), by inserting “subject to
6 paragraph (11),” after “Program,”; and

7 (2) by adding at the end the following new
8 paragraph:

9 “(11) SERVICES THAT RECEIVE PRIOR AUTHOR-
10 IZATION EXEMPTED FROM REVIEW.—Recovery audit
11 contractors may not conduct reviews with respect to
12 payments under this title for durable medical equip-
13 ment, orthotics or prosthetics, or prosthetic devices
14 for which audits under this subsection have not been
15 initiated before the date of the enactment of this
16 paragraph and to which prior authorization under
17 this title applies.”.

18 (d) ANNUAL REPORT ON OVERTURNED MAC AND
19 RAC DENIALS.—Section 1874A of the Social Security Act
20 (42 U.S.C. 1395kk-1) is amended by adding at the end
21 the following new subsection:

22 “(h) ANNUAL REPORT ON OVERTURNED MAC AND
23 RAC DENIALS.—

24 “(1) IN GENERAL.—Not later than March 1 of
25 2016, and of each year thereafter, the Secretary

1 shall submit to Congress a report that includes the
2 information described in paragraph (2).

3 “(2) INFORMATION DESCRIBED.—The informa-
4 tion described in this paragraph, with respect to de-
5 terminations by medicare administrative contractors
6 that payment cannot be made, and by recovery audit
7 contractors that payment should not have been
8 made, under this title for items and services, is the
9 following:

10 “(A) The number of such determinations
11 that, in the prior year, were determined on ap-
12 peal to have been incorrect.

13 “(B) The HCPCS codes that, in the prior
14 year, accounted for—

15 “(i) the greatest number of such de-
16 terminations; and

17 “(ii) the greatest total amount pay-
18 ment being at issue in such determina-
19 tions.

20 “(C) The number of such determinations
21 that, in the prior year, were based upon a de-
22 termination—

23 “(i) that the items and services were
24 furnished to an individual as an inpatient
25 rather than as an outpatient;

1 “(ii) regarding the application of the
2 medical review activities described in the
3 notice entitled ‘Selecting Hospital Claims
4 for Patient Status Reviews: Admissions On
5 or After October 1, 2013’, posted on the
6 Internet website of the Centers for Medi-
7 care & Medicaid Services (commonly
8 known as the ‘two-midnights rule’);

9 “(iii) that applied to a provider of
10 outpatient services; and

11 “(iv) regarding a claim for payment
12 for orthotics or prosthetics or prosthetic
13 devices.”.

14 (e) TREATING ORTHOTICS AND PROSTHETICS SEPA-
15 RATELY FROM MEDICAL EQUIPMENT AND SUPPLIES.—

16 (1) IN GENERAL.—Section 1834 of the Social
17 Security Act (42 U.S.C. 1395m) is amended—

18 (A) in subsection (j)(5)—

19 (i) by striking subparagraph (C); and

20 (ii) by redesignating subparagraphs
21 (D) through (F) as subparagraphs (C)
22 through (E), respectively;

23 (B) by adding at the end the following new
24 subsection:

1 “(r) REQUIREMENTS FOR ORTHOTISTS AND
2 PROSTHETISTS.—

3 “(1) ISSUANCE AND RENEWAL OF SUPPLIER
4 NUMBER.—

5 “(A) PAYMENT.—No payment may be
6 made under this part for orthotics and pros-
7 thetics (as described in section 1861(s)(9)) fur-
8 nished by a supplier of orthotics and prosthetics
9 unless such supplier obtains (and renews at
10 such intervals as the Secretary may require) a
11 supplier number.

12 “(B) STANDARDS FOR POSSESSING A SUP-
13 PLIER NUMBER.—A supplier of orthotics and
14 prosthetics may not obtain a supplier number
15 unless the supplier—

16 “(i) complies with all applicable State
17 and Federal licensure and regulatory re-
18 quirements;

19 “(ii) acquires accreditation from the
20 American Board for Certification in
21 Orthotics, Prosthetics and Pedorthics, Inc.,
22 the Board of Certification/Accreditation,
23 International, or such other accreditation
24 entity that the Secretary determines to
25 have accreditation standards that are

1 equivalent to the accreditation standards of
2 such boards;

3 “(iii) maintains a physical facility on
4 an appropriate site;

5 “(iv) has proof of appropriate liability
6 insurance; and

7 “(v) meets such other requirements as
8 the Secretary may specify.

9 “(C) PROHIBITION AGAINST MULTIPLE
10 SUPPLIER NUMBERS.—The Secretary may not
11 issue more than one supplier number to any
12 supplier of orthotics and prosthetics unless the
13 issuance of more than one number is appro-
14 priate to identify other entities under the sup-
15 plier’s ownership or control.

16 “(D) PROHIBITION AGAINST DELEGATION
17 OF SUPPLIER DETERMINATIONS.—The Sec-
18 retary may not delegate (other than by contract
19 under section 1842) the responsibility to deter-
20 mine whether suppliers meet the standards nec-
21 essary to obtain a supplier number.

22 “(E) CONSTRUCTION RELATING TO PRE-
23 VIOUSLY ISSUED AND RENEWED SUPPLIER
24 NUMBERS.—Supplier numbers obtained under
25 subsection (j)(1) prior to the enactment of this

1 subsection by suppliers of orthotics and pros-
2 thetics that meet the standards described in
3 subparagraph (B) shall be considered to have
4 obtained a supplier number for purposes of sub-
5 paragraph (A).

6 “(2) CERTIFICATES OF MEDICAL NECESSITY.—

7 “(A) INFORMATION PROVIDED BY SUP-
8 PLIERS OF ORTHOTICS AND PROSTHETICS ON
9 CERTIFICATES OF MEDICAL NECESSITY.—

10 “(i) IN GENERAL.—A supplier of
11 orthotics and prosthetics may distribute to
12 physicians, or to individuals entitled to
13 benefits under this part, a certificate of
14 medical necessity for commercial purposes
15 if the certificate contains the following in-
16 formation:

17 “(I) An identification of the sup-
18 plier and the beneficiary to whom
19 such orthotics and prosthetics are fur-
20 nished.

21 “(II) An identification of the
22 treating physician, including the
23 name, Medicare provider number, ad-
24 dress, and telephone number of such
25 physician.

1 “(III) A description of such
2 orthotics and prosthetics.

3 “(IV) Any billing code identifying
4 such orthotics and prosthetics, includ-
5 ing the HCPCS codes, and summary
6 descriptors of the items and services
7 being recommended.

8 “(V) The codes used under this
9 title for payment for such orthotics
10 and prosthetics, a description of the
11 medical and functional condition of
12 the beneficiary, and information about
13 the need of the beneficiary for the
14 orthotics or prosthetics.

15 “(VI) Any other administrative
16 information identified by the Sec-
17 retary.

18 “(ii) INFORMATION ON PAYMENT
19 AMOUNT AND CHARGES.—If a supplier dis-
20 tributes a certificate of medical necessity
21 for orthotics and prosthetics, the supplier
22 shall also list on the certificate of medical
23 necessity the fee schedule amount and the
24 supplier’s charge for the orthotics and
25 prosthetics being furnished prior to dis-

1 tribution of such certificate to the physi-
2 cian.

3 “(iii) PENALTY.—Any supplier of
4 orthotics and prosthetics who knowingly
5 and willfully distributes a certificate of
6 medical necessity in violation of clause (i)
7 or fails to provide the information required
8 under clause (ii) or (iii) is subject to a civil
9 money penalty in an amount not to exceed
10 \$1,000 for each such certificate of medical
11 necessity so distributed. The provisions of
12 section 1128A (other than subsections (a)
13 and (b)) shall apply to civil money pen-
14 alties under this subparagraph in the same
15 manner as they apply to a penalty or pro-
16 ceeding under section 1128A(a).

17 “(B) SIGNATURE OF TREATING PHYSICIAN
18 REQUIRED.—The Secretary shall require that,
19 in order for a certificate of medical necessity
20 submitted to the Secretary to be treated as
21 showing that orthotics and prosthetics are rea-
22 sonable and necessary for the diagnosis or
23 treatment of an illness or injury or to improve
24 the functioning of a malformed body member,

1 the certificate of medical necessity be signed by
2 the treating physician.

3 “(C) DEFINITION.—For purposes of this
4 paragraph, the term ‘certificate of medical ne-
5 cessity’ means a form or other document, in-
6 cluding a detailed written order, containing in-
7 formation required by the Secretary to be sub-
8 mitted to show that orthotics and prosthetics
9 are reasonable and necessary for the diagnosis
10 or treatment of illness or injury or to improve
11 the functioning of a malformed body member.

12 “(3) COVERAGE AND REVIEW CRITERIA.—The
13 Secretary shall annually review the coverage and uti-
14 lization of orthotics and prosthetics to determine
15 whether such orthotics and prosthetics should be
16 made subject to coverage and utilization review cri-
17 teria, and if appropriate, shall develop and apply
18 such criteria to such items.

19 “(4) LIMITATION ON PATIENT LIABILITY.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graph (B), if a supplier of orthotics and pros-
22 thetics furnishes orthotics and prosthetics to an
23 individual for which no payment may be made
24 under this part (including, subject to section
25 1879, because the orthotics and prosthetics are

1 not reasonable and necessary for the diagnosis
2 or treatment of illness or injury or to improve
3 the functioning of a malformed body member,
4 as required under section 1862(a)(1)), any ex-
5 penses incurred for such orthotics and pros-
6 thetics furnished to an individual by such a
7 supplier not on an assigned basis shall be the
8 responsibility of such supplier. The individual
9 shall have no financial responsibility for such
10 expenses and the supplier shall refund on a
11 timely basis to the individual (and shall be lia-
12 ble to the individual for) any amounts collected
13 from the individual for such items or services.
14 The provisions of subsection (a)(18) shall apply
15 to refunds required under the previous sentence
16 in the same manner as such provisions apply to
17 refunds under such subsection.

18 “(B) EXCEPTION.—If a supplier of
19 orthotics and prosthetics furnishes orthotics
20 and prosthetics to an individual for which pay-
21 ment is denied in advance under subsection
22 (a)(15), expenses incurred for such orthotics
23 and prosthetics shall be the responsibility of the
24 individual.”

1 (2) CONFORMING AMENDMENTS.—Section
2 1865(a)(1) of the Social Security Act (42 U.S.C.
3 1395bb(a)(1)) is amended by inserting “or section
4 1834(r), as applicable,” after “section 1834(j)”.

5 (f) LIMITATION OF COMPETITIVE ACQUISITION FOR
6 OFF-THE-SHELF ORTHOTICS.—Section 1847(a)(7)(A) of
7 the Social Security Act (42 U.S.C. 1395w-3(a)(7)(A)) is
8 amended—

9 (1) in clause (i), by striking “or” at the end;

10 (2) by redesignating clause (ii) as clause (iii);

11 and

12 (3) by inserting after clause (i) the following
13 new clause:

14 “(ii) by an orthotist or prosthetist de-
15 scribed in subclause (II) or (III) of section
16 1834(h)(1)(F)(iii) to the patients of the
17 orthotist or prosthetist as part of the pro-
18 fessional service of the orthotist or pros-
19 thetist; or”.

20 (g) LIMITING RECOUPMENT FROM MEDICARE AP-
21 PELLANTS UNTIL COMPLETION OF ALJ APPEALS PROC-
22 ESS.—Section 1869 of the Social Security Act (42 U.S.C.
23 1395ff) is amended by adding at the end the following
24 new subsection:

1 “(j) LIMITATION ON RECOUPMENT PRIOR TO COM-
2 PLETION OF ALJ APPEALS PROCESS.—

3 “(1) IN GENERAL.—Notwithstanding any other
4 provision of this section, the Secretary may not re-
5 coup more than half of the amount of any payments
6 made to a qualifying provider or supplier with re-
7 spect to a claim for items or services that is subject
8 to a determination, reconsideration, or hearing
9 under this subsection, before—

10 “(A) the date on which a decision has been
11 rendered under subsection (d)(1) with respect
12 to such claim; or

13 “(B) in the case of a determination or re-
14 consideration for such claim which is not eligi-
15 ble for a hearing under subsection (d)(1), the
16 date on which the appeals process for such
17 claim under this section (other than h sub-
18 section) is treated as exhausted.

19 “(2) QUALIFYING PROVIDER OR SUPPLIER DE-
20 FINED.—For purposes of paragraph (1), the term
21 ‘qualifying provider or supplier’ means a provider of
22 services or supplier that—

23 “(A) has maintained a Medicare provider
24 number for six years or longer;

1 “(B) is not under investigation for any po-
2 tential violations of applicable Federal and
3 State laws and regulations;

4 “(C) has a good record of submitting prop-
5 er claims for items or services under this title,
6 as determined by the Secretary; and

7 “(D) furnished the items or services de-
8 scribed in paragraph (1) to an individual in
9 person.”.

10 (h) ELIGIBILITY FOR PAYMENT FOR SUPPLIERS AND
11 PROVIDERS BASED ON QUALIFICATIONS.—

12 (1) IN GENERAL.—Title XVIII of the Social Se-
13 curity Act is amended by inserting after section
14 1863 (42 U.S.C. 1395z) the following new section:

15 **“SEC. 1863A. ELIGIBILITY FOR PAYMENT FOR SUPPLIERS**
16 **AND PROVIDERS BASED ON QUALIFICATIONS.**

17 “(a) IN GENERAL.—No payment may be made under
18 this title for an item or service that is furnished—

19 “(1) in a State that requires a provider or sup-
20 plier to be licensed in order to furnish such item or
21 service, unless the provider or supplier furnishing
22 such item or service possesses all applicable licensure
23 from the State; or

24 “(2) in a State that does not require a provider
25 or supplier to be licensed in order to furnish such

1 item or service, unless the provider or supplier meets
2 all applicable qualifications, as determined by the
3 Secretary.

4 “(b) APPLICABLE QUALIFICATIONS DEFINED.—For
5 purposes of subsection (a), the term ‘applicable qualifica-
6 tions’ means, with respect to a provider or supplier, all
7 applicable accreditations, certifications, and credentials re-
8 quired of such provider or supplier under this title in order
9 for such provider and supplier to receive payment under
10 this title for items or services furnished by such provider
11 or supplier, including the requirements described in the
12 special payment rules for certain prosthetics and custom-
13 fabricated orthotics under section 1834(h)(1)(F).”.

14 (2) EFFECTIVE DATE.—This section shall apply
15 with respect to items and services furnished on or
16 after the date of the enactment of this section.