

H.R. 1530

To amend title XVIII of the Social Security Act to refine how Medicare pays for orthotics and prosthetics, to improve beneficiary experience and outcomes with orthotic and prosthetic care, and to streamline the Medicare administrative appeals process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Thompson of Pennsylvania (for himself and Mr. Thompson of California) introduced the following bill; which was referred to the Committee on

A BILL

To amend title XVIII of the Social Security Act to refine how Medicare pays for orthotics and prosthetics, to improve beneficiary experience and outcomes with orthotic and prosthetic care, and to streamline the Medicare administrative appeals process, and for other purposes.

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

3

4 **SEC. 1. SHORT TITLE; TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.** This Act may be cited as the “Medicare Orthotics and Prosthetics
6 Improvement Act of 2015.”

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

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

9 Sec. 2. Eligibility for Medicare payment for health professionals based on
10 qualifications.

11 Sec. 3. Modification of requirements applicable under Medicare to the designation
12 of accreditation organizations for suppliers of orthotics and prosthetics.

13 Sec. 4. Application of existing accreditation and licensure requirements to certain
14 prosthetics and custom-fabricated or custom-fitted orthotics.

15 Sec. 5. Eligibility for Medicare payment for orthotics and prosthetics based on
16 supplier qualifications and complexity of care.

1 Sec. 6. Orthotist’s and prosthetist’s clinical notes as part of the patient’s medical
2 record.

3 Sec. 7. Distinguishing orthotists and prosthetists from suppliers of durable
4 medical equipment and supplies.

5 Sec. 8. Greater accountability and transparency of recovery audit contractors.

6 Sect. 9. Maintaining due process and satisfying the ninety day statutory period for
7 administrative law judge decisions.

8 Sec. 10. Clarification about minimal self-adjustment for off-the-shelf orthotics.

9 Sec. 11. Regulations.

10 **SEC. 2. ELIGIBILITY FOR MEDICARE PAYMENT FOR HEALTH**
11 **PROFESSIONALS BASED ON QUALIFICATIONS**

12 (a) IN GENERAL -- Title XVIII of the Social Security Act is amended by
13 inserting after section 1863 (42 U.S.C. § 1395z) the following new section:

14 “Sec. 1863A. Eligibility for Medicare Payment for Suppliers Based on
15 Qualifications. No payment may be made under this part for an item or service
16 that is furnished (i) in a State that requires a provider or supplier to be licensed in
17 order to furnish such item or service, unless the provider or supplier furnishing
18 such item or service possesses all applicable licensure from the State, or (ii) in a
19 State that does not require a provider or supplier to be licensed in order to furnish
20 such item or service, unless the provider or supplier meets all applicable
21 qualifications, as established by the Secretary. Applicable qualifications means
22 all applicable accreditations, certifications, and credentials required under this
23 part for providers and suppliers, including the requirements established under
24 section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and
25 Protections Act of 2000, as enacted into law by section 1(a)(6) of Public Law
26 106-554, with these requirements to be applicable immediately in accordance
27 with that statutory language even in advance of the Secretary issuing applicable
28 regulations under this provision, as well any and all applicable regulations as
29 established by the Secretary, this being noted inasmuch as issuance of these
30 regulations are approximately fourteen years beyond the statutory requirement for

1 their being issued in final form by the Secretary, which it is anticipated the
2 Secretary will remedy expeditiously.”

3 (b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of
4 this Act.

5 **SEC. 3. MODIFICATION OF REQUIREMENTS APPLICABLE UNDER**
6 **MEDICARE TO THE DESIGNATION OF ACCREDITATION**
7 **ORGANIZATIONS FOR SUPPLIERS OF ORTHOTICS AND PROSTHETICS**

8 (a) IN GENERAL.--Section 1834(a)(20)(B) of the Social Security Act (42 U.S.C. §
9 1395m(a)(20)(B)) is amended--

10 (1) by striking “ORGANIZATIONS.--Not later than” and inserting: “

11 ORGANIZATIONS.—

12 “(i) In general.--Subject to clause (ii), not later than”; and

13 (2) by adding after clause (i), as added by paragraph (1), the following new
14 clauses:

15 “(ii) SPECIAL REQUIREMENTS FOR ACCREDITATION OF SUPPLIERS
16 OF ORTHOTICS AND PROSTHETICS.--For purposes of applying quality
17 standards under subparagraph (A) for suppliers (other than suppliers described in
18 clause (iii)) of items and services described in subparagraph (D)(ii), the Secretary
19 shall designate and approve independent accreditation organizations under clause
20 (i) only if such organizations are Boards or programs described in subsection
21 (h)(1)(F)(iv). Not later than January 1, 2016, the Secretary shall ensure that at
22 least one, and ideally multiple, independent accreditation organizations are
23 designated and approved in accordance with this clause.

24 “(iii) Exception.--Suppliers described in this clause are physicians, occupational
25 therapists, or physical therapists who are licensed or otherwise regulated by the
26 State in which they are practicing and who receive payment under this title,
27 including regulations promulgated pursuant to this subsection.”.

28 (b) Effective Date.—The designated and approved organizations must satisfy
29 the requirement of section 1834(a)(20)(B)(ii), as added by subsection (a)(2), not
30 later than January 1, 2016, regardless of whether such organizations are

1 designated or approved as an independent accreditation organization before, on,
2 or after the date of the enactment of this Act.

3 **SEC. 4. APPLICATION OF EXISTING ACCREDITATION AND**
4 **LICENSURE REQUIREMENTS TO CERTAIN PROSTHETICS AND CUSTOM-**
5 **FABRICATED OR CUSTOM-FITTED ORTHOTICS.**

6 (a) IN GENERAL.—Section 1834(h)(1)(F) of the Social Security Act (42 U.S.C.
7 1395m(h)(1)(F) is amended—

8 (1) in the heading, by inserting “OR CUSTOM-FITTED” after “CUSTOM-
9 FABRICATED”;

10 (2) in clause (i), by striking “an item of custom-fabricated orthotics described in
11 clause (ii) or for an item of prosthetics unless such item is” and inserting “an item
12 of orthotics or prosthetics, including an item of custom-fabricated orthotics
13 described in clause (ii), unless such item is”;

14 (3) in clause (ii)(II), by striking “a list of items to which this subparagraph
15 applies” and inserting “a list of items for purposes of clause (i)”;

16 (4) in clause (iii)(III), by striking “to provide or manage the provision of
17 prosthetics and custom-designed or –fabricated orthotics” and inserting “to
18 provide or manage the provision of orthotics and prosthetics (and custom-
19 designed or –fabricated orthotics, in the case of an item described in clause (ii))”;
20 and

21 (5) by adding at the end the following new clause:

22 “(v) EXEMPTION OF OFF-THE SHELF ORTHOTICS INCLUDED IN A
23 COMPETITIVE ACQUISITION PROGRAM.—This subparagraph shall not apply to
24 an item of orthotics described in paragraph (2)(C) of section 1847(a) furnished
25 on or after January 1, 2016, that is included in a competitive acquisition area
26 under such section.”.

1 (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to
2 orthotics and prosthetics furnished on or after January 1, 2016.

3 **SEC. 5. ELIGIBILITY FOR MEDICARE PAYMENT FOR ORTHOTICS**
4 **AND PROSTHETICS BASED ON SUPPLIER QUALIFICATIONS AND**
5 **COMPLEXITY OF CARE.**

6 Section 1834(h) of the Social Security Act (42 U.S.C. § 1395m(h)) is amended—

7 (1) in paragraph (1)(F)(iii), in the matter preceding subclause (I), by striking
8 “other individual who” and inserting “other individual who, with respect to the
9 provision of orthotics and prosthetics furnished on or after January 1, 2016, and
10 subject to paragraph (5)(A), satisfies all applicable criteria of the provider
11 qualification designation for such category described in the respective clause, and
12 who”;

13 (2) in paragraph (1)(F)(iv), by inserting before the period the following: “and,
14 with respect to the provision of orthotics and prosthetics furnished on or after
15 January 1, 2016, and subject to paragraph (5)(A), satisfies all applicable criteria of
16 the provider qualification designation for such orthotic or prosthetic”; and

17 (3) by adding at the end the following new paragraph”

18 “(5) ELIGIBILITY FOR PAYMENT BASED ON SUPPLIER QUALIFICATIONS AND
19 COMPLEXITY OF CARE.—

20 “(A) CONSIDERATIONS FOR ELIGIBILITY FOR PAYMENTS.—

21 “(i) IN GENERAL.—In applying clauses (iii) and (iv) of
22 paragraph (1)(F) for purposes of determining whether payment
23 may be made under this subsection for orthotics and prosthetics
24 furnished on or after January 1, 2016, the Secretary shall take into
25 account the complexity of the respective item and, subject to
26 clauses (ii), (iii), and (iv), the qualifications of the individual or

1 entity furnishing and fabricating such respective item in
2 accordance with this paragraph.

3 “(ii) INDIVIDUALS AND ENTITIES EXEMPTED FROM SUPPLIER
4 QUALIFICATION CRITERIA.—With respect to the provision of
5 orthotics or prosthetics, any criteria for supplier qualifications shall
6 not apply to physicians, occupational therapists, or physical
7 therapists who are licensed or otherwise regulated by the State in
8 which they are practicing and who receive payment under this title,
9 including regulations promulgated pursuant to this subsection, for
10 the provision of orthotics and prosthetics.

11 “(iii) SUPPLIERS MEDICARE-ELIGIBLE PRIOR TO JANUARY 1,
12 2016 EXEMPTED.—In the case of a qualified supplier who is
13 eligible to receive payment under this title before January 1, 2016,
14 with respect to the provision of orthotics and prosthetics, any new
15 criteria for provider qualifications established after such date shall
16 not apply to such supplier, for the furnishing or fabrication of such
17 an item

18 “(iv) MODIFICATIONS.—The Secretary shall, in consultation
19 with the Boards and programs described in paragraph (1)(F)(iv),
20 periodically review the criteria for supplier qualifications and may
21 implement by regulation any modifications to such criteria, as
22 determined appropriate in accordance with such consultation. Any
23 such modifications shall take effect no earlier than January 1,
24 2016.

25 “(B) ASSIGNMENT OF BILLING CODES.—For purposes of
26 subparagraph (A), the Secretary, in consultation with representatives
27 of the fields of occupational therapy, physical therapy, orthotics, and
28 prosthetics, shall utilize and incorporate the set of L-codes listed, as of
29 the date of enactment of this paragraph, in the Centers for Medicare &

1 Medicaid Services document entitled Transmittal 656 (CMS Pub. 100-
2 04, Change Request 3959, August 19, 2005). Transmittal 656 shall be
3 the controlling source of category, product, and code assignments for
4 the orthotics and prosthetics care, using the supplier qualification
5 designation for each HCPCS code as stated in such document. In the
6 case that Transmittal 656 is updated, reissued, or replaced by a
7 subsequent document, the previous sentence shall be applied with
8 respect to the most recent update, reissuance, or replacement of such
9 document.

10 **SEC. 6. 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)), as amended by
13 section 5, is amended by adding at the end the following new paragraph:

14 “(6) DOCUMENTATION CREATED BY ORTHOTISTS AND PROSTHETISTS.—

15 With respect to claims filed after August 11, 2011, for purposes of determining the
16 reasonableness, medical necessity, and functional level (applicable to prosthetics) of
17 prosthetic devices and orthotics and prosthetics, documentation created by an orthotist or
18 prosthetist shall be considered part of the patient’s medical record and, consistent with
19 the treatment of orthotic and prosthetic patient care delivery stated in the health care
20 professional exception provided in clause (ii) of subsection (a)(20)(F), shall be given the
21 same consideration as documentation created by other health professionals, including
22 physicians, nurse practitioners, occupational therapists, and physical therapists. For
23 claims filed before date of enactment of this Act, this paragraph shall not apply to those
24 appeals of claim denials that have been waived, denied at the last level of appeal, or
25 otherwise settled.”

26 **SEC. 7. DISTINGUISHING ORTHOTISTS AND PROSTHETISTS FROM**
27 **SUPPLIERS OF DURABLE MEDICAL EQUIPMENT AND SUPPLIES.**

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

29 Section 1834(j)(5) of the Social Security Act (42 U.S.C. § 1395m(j)(5)) is amended
30 by striking subparagraph (C).

1 (b) REQUIREMENTS FOR ORTHOTISTS AND PROSTHETISTS. Section 1834 of the
2 Social Security Act (42 U.S.C. § 1395m) is amended by adding at the end the
3 following new subsection:

4 “(r) REQUIREMENTS FOR ORTHOTISTS AND PROSTHETISTS.--

5 “(1) ISSUANCE AND RENEWAL OF SUPPLIER NUMBER.--

6 “(A) PAYMENT.—

7 “(i) IN GENERAL.-- No payment may be made under this part to an orthotic
8 or prosthetic supplier unless such orthotic or prosthetic supplier obtains (and
9 renews at such intervals as the Secretary may require) a supplier number;
10 provided, however, that providers otherwise permitted to receive payment for
11 orthotics and prosthetics under Part A may continue to receive such payment
12 without interruption.

13 “(B) Standards for possessing a supplier number.-- An orthotic and/or prosthetic
14 supplier may not obtain a supplier number unless the supplier meets standards
15 prescribed by the Secretary that include requirements that the orthotic/prosthetic
16 supplier (and, where applicable, the orthotist or prosthetist)—

17 “(i) comply with all applicable State and Federal licensure and regulatory
18 requirements;

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

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

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

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

2 “(C) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS.-- The
3 Secretary may not issue more than one supplier number to any orthotic and/or
4 prosthetic supplier unless the Secretary finds that the issuance of more than one
5 number is appropriate to identify other entities under the orthotic or prosthetic
6 supplier’s ownership or control.

7 “(2) ORDER FOR ORTHOTICS OR PROSTHETICS.--

8 “(A) INFORMATION PROVIDED BY ORTHOTISTS AND PROSTHETISTS
9 ON DETAILED ORDERS FOR ORTHOTICS AND PROSTHETICS.-- An orthotist
10 or prosthetist may distribute to physicians, or to an individual entitled to benefits
11 under this part, a detailed written order for orthotics or prosthetics (as defined in
12 paragraph (4)) for commercial purposes that contains the following information:

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

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

17 “(iii) signature of the physician identified in (ii);

18 “(iv) A description of such orthotics or prosthetics;

19 “(v) Any billing code identifying such orthotics or prosthetics;

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

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

24 “(B) INFORMATION ON CODING AND DESCRIPTORS OF COMPONENTS
25 PROVIDED.-- If an orthotist or prosthetist distributes a detailed written order for

1 orthotics or prosthetics, the orthotist or prosthetist also shall list on the order the
2 HCPCS codes and summary descriptors of the items and services being
3 recommended prior to distribution of such order to the treating physician.

4 “(C) WRITTEN PHYSICIAN ORDER.-- A detailed written order for orthotics or
5 prosthetics must be signed by the treating physician identified in (a)(ii) of this
6 subsection, and be included in the orthotist or prosthetist’s order.

7 “(3) LIMITATION ON PATIENT LIABILITY. If an orthotist or prosthetist—

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

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

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

20 “(4) PATIENT LIABILITY.-- If an orthotist or prosthetist furnishes an orthotic or
21 prosthetic to a beneficiary for which payment is denied in advance under subsection
22 (a)(15) of this section, expenses incurred for such orthotic or prosthetic furnished to
23 the beneficiary by the orthotist or prosthetist shall be the responsibility of the
24 beneficiary.

25 “(5) DEFINITIONS.-- For purposes of this paragraph—

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

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

7 “(ii) in the case of a State that does not provide for the licensing of orthotists
8 and prosthetists, is certified by the American Board of Certification in Orthotics,
9 Prosthetics and Pedorthics, Inc. or by the Board of Certification/Accreditation,
10 International, or certified and approved by a program that the Secretary
11 determines has certification and approval standards that are essentially equivalent
12 to those of such Boards listed in this subsection.”

13 “(B) “Orthotics and prosthetics” shall have the meaning given such term in
14 1834(h)(4)(C).

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

21 (c) EFFECTIVE DATE.—The amendments made by this section shall take
22 effect on the date of enactment of this Act, and apply to items and services furnished
23 on or after such date.

24 **SEC. 8. GREATER ACCOUNTABILITY AND TRANSPARENCY OF**
25 **RECOVERY AUDIT CONTRACTORS**

26 (a) IN GENERAL.--Section 1893(h) of the Social Security Act (42 U.S.C. §
27 1395ddd(h)) is amended by adding at the end the following:

1 “(9) PUBLIC REPORTING OF RECOVERY AUDIT CONTRACTOR
2 PERFORMANCE.

3 “(A) IN GENERAL.-- With respect to each recovery audit contractor
4 with a contract under this section for a contract year the Secretary shall
5 publish on the Internet website of the Centers for Medicare & Medicaid
6 Services the following information with respect to the performance of
7 each such recovery audit contractor:

8 “(i) Audit rates.

9 “(ii) Appeals outcomes rates at each stage of the appeals process
10 under section 1869.

11 “(B) SEPARATE CATEGORIES OF PROVIDERS OF SERVICES AND
12 SUPPLIERS FOR INFORMATION REPORTED.--When compiling
13 and publicly reporting the information described in subparagraph (A),
14 the Secretary shall create separate categories of providers and
15 suppliers, including a separate category for orthotics and prosthetics
16 instead of aggregating orthotics and prosthetics with durable medical
17 equipment and supplies.”.

18 (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply
19 not later than contract years beginning on or after the date of enactment of this
20 Act.

21 **SEC. 9. MAINTAINING DUE PROCESS AND SATISFYING THE NINETY DAY**
22 **STATUTORY PERIOD FOR ADMINISTRATIVE LAW JUDGE DECISIONS.**

23 (a) TIMELY DECISIONS.—Subject to subsection(b), the Secretary shall not
24 recoup more than 50 percent of any overpayments for qualified providers and hospitals in
25 response to an audit carried out by a recovery audit contractor under this section until an
26 administrative law judge has rendered a decision, until such time as the Secretary certifies
27 that, in the majority of requests for hearing filed by providers and suppliers under section
28 1869(d) of the Social Security Act (42 U.S.C. § 1395ff(d)), an administrative law judge
29 has rendered a decision within the 90-day period beginning on the date a request for
30 hearing has been timely filed.

- 1 (1) For purposes of this subsection, a qualifying provider is one that:
- 2 (i) Meets the requirements as a Medicare provider or supplier;
- 3 (ii) Has maintained a Medicare provider number for a minimum of
4 six years;
- 5 (iii) Is in good standing with applicable federal and state laws and
6 regulations;
- 7 (iv) Has a good record of proper payments under Medicare, as
8 determined by the Secretary; and
- 9 (v) The beneficiary was treated in person.

10 (2) This subsection shall be voluntary for providers and shall not prohibit
11 providers from choosing a different course of action.

12 (b) EXCEPTION FOR AUDITS RELATED TO FRAUDULENT ACTIVITY. —
13 Notwithstanding subsection (a), the Secretary may recoup overpayments related to or
14 resulting from fraudulent activity on the part of a Medicare provider or supplier.

15 (c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of
16 this Act.

17 **SEC. 10. CLARIFICATION ABOUT MINIMAL SELF-ADJUSTMENT FOR**
18 **OFF-THE-SHELF ORTHOTICS.**

19 (a) IN GENERAL.--Section 1847(a)(2)(C) of the Social Security Act (42
20 U.S.C. § 1395w-3(a)(2)(C)) is amended—

21 (1) by inserting “furnished to a patient” after “section 1861(s)(9) of this
22 title”;

23 (2) by inserting “by that patient (and not by any other person)” after
24 “minimal self-adjustment”; and

25 (3) by striking “to fit to the individual” and inserting “to fit to that patient”.

1 (b) INCLUSION IN MEDICAL AND OTHER HEALTH SERVICES.--

2 Section 1861(s)(9) of the Social Security Act (42 U.S.C. § 1395) is amended—

3 (1) by striking “leg, arm” and inserting “(A) leg, arm”;

4 (2) in subparagraph (A), as added by paragraph (1), by striking the semicolon
5 and inserting “; and”; and

6 (3) by adding the following new subparagraph:

7 “(B) off-the-shelf orthotics (as defined in section 1847(a)(2)(C)).”.

8 (c) EFFECTIVE DATE.—The amendments made by this section shall take effect
9 on April 1, 2007, and apply to items and services furnished on or after such
10 date.

11 **SEC. 11. REGULATIONS.**

12 No later than 120 days after enactment of this Act, the Secretary shall promulgate
13 regulations to implement—

14 (1) the provisions of, and amendments made by, this Act; and

15 (2) the provisions of, and amendments made by, section 427 of the Medicare,
16 Medicaid and SCHIP Benefits Improvement and Protections Act of 2000, as enacted into
17 law by section 1(a)(6) of Public Law 106-554.