



# The Medicare Orthotics & Prosthetics Patient-Centered Care Act

H.R. 1990 - Reps. Mike Thompson (D-CA), Brett Guthrie (R-KY), GK Butterfield (D-NC), and GT Thompson (R-PA)

S. 2556 – Senators Mark Warner (D-VA), Steve Daines (R-MT), Tammy Duckworth (D-IL), Chuck Grassley (R-IA), John Cornyn (R-TX) and Bill Cassidy (R-LA)

## **What is the Medicare Orthotics & Prosthetics Patient-Centered Care Act and what are the key components?**

This legislation would:

- Differentiate the clinical, service-oriented nature in which O&P is provided from the standard durable medical equipment (DME) benefit.
- Clarify that competitive bidding may only apply to orthoses that have a reasonable expectation of being adjusted by the patients themselves, not the patient’s caregiver or a supplier.
- Prohibit the practice of “drop shipping” (shipping orthoses to a beneficiary without first receiving direct patient care from a trained, certified or licensed health care practitioner) of orthotic braces that are not truly “off-the-shelf.”
- Exempt certified and/or licensed orthotists and prosthetists from the requirement to have a competitive bidding contract to provide OTS orthoses to their patients, much like the law treats therapists and physicians.

## **Why is it important to differentiate O&P from DME?**

Orthotics and prosthetics care includes a patient care component that is decidedly more in-depth and personal than supplying Durable Medical Equipment (DME), yet O&P practitioners are (at least statutorily) viewed as DME suppliers. Most O&P devices are custom fabricated or custom fit and require the expertise of an orthotist or prosthetist who receive Master of Science degrees and residence training before becoming certified practitioners. Differentiating O&P from DME would be the first step to creating a path to billing for telehealth, which is increasingly important during the COVID pandemic.

## **Why is it important to clarify the definition of “off-the-shelf” orthotics?**

Congress created a definition of OTS orthotics as devices “requiring minimal self-adjustment for appropriate use” that “do not require expertise in trimming, bending, molding assembling, or customizing to fit to the individual.” However, CMS has expanded the definition to define minimal self-adjustment as an adjustment the “beneficiary, caretaker for the beneficiary or supplier can perform,” which is clearly NOT “self-adjusted.” This expanded definition places beneficiaries at risk for harm if they receive orthotic devices without the clinical care that is necessary to ensure proper bracing. A definition of minimal self-adjustment should include only orthoses that can be put on and adjusted by one person or, at most, a caregiver tightening Velcro or tightening a strap. CMS, however, has allowed numerous devices that are entirely too difficult to be adjusted by one person to be included in this category; this legislation would correct that.

### **Will the ban on “drop shipping” affect patients receiving devices from their own providers?**

Not at all – it will simply seek to bring a stop to those companies that prey on beneficiaries through late night ads and cold phone calls and send them braces that they don’t need and/or can’t put on correctly. In 2019, the Department of Justice [brought federal indictments](#) and other actions in one of the largest health care fraud schemes involving telemedicine and DME, resulting in charges against 24 individuals responsible for more than \$1.2 billion in Medicare fraud. The scheme involved the payment of illegal kickbacks and bribes by DME companies in exchange for the referral of Medicare beneficiaries by medical professionals working with fraudulent telemedicine companies for back, shoulder, wrist and knee braces that were medically unnecessary. It’s this practice – NOT the work of legitimate healthcare professionals – that the bill would seek to eliminate.

### **Why would exempting O&P from competitive bidding be beneficial to individuals with recent amputations?**

The DMEPOS Competitive Bidding Program was mandated by Congress in 2003. It required that Medicare replace the fee schedule payment methodology for selected DME, Prosthetics, Orthotics and Supplies (DMEPOS) items with a competitive bid process. The intent was to improve the effectiveness of the Medicare methodology for setting DMEPOS payment amounts, which would reduce beneficiary out-of-pocket expenses and save the Medicare program money while ensuring beneficiary access to quality items and services.

Under the program, a competition among suppliers who operate in a particular competitive bidding area is conducted. Suppliers are required to submit a bid for selected products. Not all products or items are subject to competitive bidding. Bids are evaluated based on the supplier’s eligibility, its financial stability, and the bid price. Contracts are awarded to the Medicare suppliers who offer the best price and meet applicable quality and financial standards.

Many individuals living with limb loss/difference require an orthosis on their sound side to ensure health and stability. Creating an exemption from OTS competitive bidding for licensed and certified O&P practitioners – thereby treating them similarly to physicians and therapists by allowing them to provide OTS orthoses to their patients without a contract at the competitive bidding rate – would allow a patient needing a prosthesis and an orthosis to receive both items from the same provider, rather than an additional visit to an orthotist with a competitive bidding contract.

**For more information, please contact Ashlie White, Director of Health Policy and Strategic Alliances, American Orthotic and Prosthetic Association, at [awhite@AOPAnet.org](mailto:awhite@AOPAnet.org).**

*[The American Orthotic and Prosthetic Association \(AOPA\)](#) is a national trade association committed to providing business services and products to O&P professionals. Since its founding in 1917, AOPA has worked diligently to establish itself as the voice for O&P businesses. Through government relations efforts, AOPA works to raise awareness of the profession and impact policies that affect the future of the O&P industry. AOPA membership consists of more than 2000 O&P patient care facilities and suppliers that manufacture, distribute, design, fabricate, fit, and supervise the use of orthoses and prostheses.*