

Medicare Orthotics and Prosthetics Patient-Centered Care Act

By Senators Mark R. Warner and Steve Daines

Background and Need for Legislation

The provision of Orthotic & Prosthetic (O&P) care requires clinical services provided by highly trained practitioners. The majority of orthoses and prostheses are custom fabricated or custom fitted and require the expertise of an orthotist and/or prosthetist with an advanced degree and clinical training before becoming certified and/or licensed practitioners. The provision of custom O&P care generally stands in sharp contrast to the delivery of durable medical equipment (DME).

Despite this contrast, current DME statutory provisions are routinely applied to the provision of O&P care—unfairly regulating O&P clinical care through a DME lens. This legislation protects patients by recognizing the clinical, service-oriented manner in which orthoses and limb prostheses are provided.

The Medicare Orthotics and Prosthetics Patient-Centered Care Act Would:

- Create separate statutory requirements for the provision of orthoses and prostheses to reflect the clinical, service-oriented nature of O&P care. These changes are not intended to create a new Medicare benefit. (section 2(a))
- Restore Congress' intended meaning of the term "minimal self-adjustment," to more clearly define off-the-shelf (OTS) orthoses that are subject to CMS' competitive bidding program. Limiting competitive bidding to orthoses that truly require only "minimal self-adjustment" performed solely by the patient will protect beneficiaries by preserving access to the clinical assessment, fitting, and instruction necessary to achieve the therapeutic value of non-OTS orthoses, as well as to prevent potential patient harm. (section 2(d))
- Prohibit the practice of "drop shipping" custom orthoses and prostheses to Medicare beneficiaries. Under this provision, only off-the-shelf orthoses would be allowed to be drop shipped. This provision would reduce Medicare waste, fraud, and abuse in the O&P benefit through the growing use of "lead generators" that operate through a model based on late-night advertisements and telemedicine companies, as noted in Chapter 6 of the Medicare Payment Advisory Commission's ("MedPAC's") June 2018 Report to the Congress. (section 2(b))
- Ensure that patients have access to the full range of orthotic care from one orthotic/prosthetic practitioner rather than requiring patients to visit multiple providers in the case where the treating orthotist or prosthetist does not have a competitive bidding contract. This provision helps ensure efficient and convenient patient care and is similar to the treatment afforded physicians and other practitioners as defined by the Secretary. Since orthotic and prosthetic practitioners would be reimbursed according to the adjusted Medicare fee schedule established through the competitive bidding process for OTS orthoses, this provision should not cost the Medicare program any more than it will otherwise spend on OTS orthoses. (section 2(d))