

115TH CONGRESS  
1ST SESSION

# H. R. 2445

To amend title XVIII of the Social Security Act to provide for a prior authorization process under the Medicare program for certain high cost durable medical equipment, prosthetics, orthotics, and supplies.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2017

Mrs. BLACKBURN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to provide for a prior authorization process under the Medicare program for certain high cost durable medical equipment, prosthetics, orthotics, and supplies.

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 “DMEPOS Access and  
5 Transparency Act of 2017” or the “DATA Act of 2017”.

1 **SEC. 2. PRIOR AUTHORIZATION PROCESS FOR CERTAIN**  
2 **HIGH COST DURABLE MEDICAL EQUIPMENT,**  
3 **PROSTHETICS, ORTHOTICS, AND SUPPLIES**  
4 **UNDER THE MEDICARE PROGRAM.**

5 Section 1834(a)(15) of the Social Security Act (42  
6 U.S.C. 1395m(a)(15)) is amended—

7 (1) in the paragraph heading, by striking  
8 “ITEMS” and inserting “ITEMS; PRIOR AUTHORIZA-  
9 TION PROCESS FOR CERTAIN HIGH COST DURABLE  
10 MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS,  
11 AND SUPPLIES”; and

12 (2) by adding at the end the following new sub-  
13 paragraphs:

14 “(D) PRIOR AUTHORIZATION PROCESS FOR  
15 CERTAIN HIGH COST DURABLE MEDICAL EQUIP-  
16 MENT, PROSTHETICS, ORTHOTICS, AND SUP-  
17 PLIES.—

18 “(i) IN GENERAL.—Not later than 1  
19 year after the date of the enactment of this  
20 subparagraph, the Secretary shall develop  
21 and implement a prior authorization proc-  
22 ess for certain durable medical equipment,  
23 prosthetics, orthotics, and supplies. A  
24 claim for an item of durable medical equip-  
25 ment, a prosthetic, an orthotic, or a supply  
26 that has received prior approval through

1 the prior authorization process shall be ex-  
2 empt from subsequent pre- and post-pay-  
3 ment audits and only subject to audits for  
4 systematic fraud and abuse.

5 “(ii) CONSIDERATION OF FACTORS.—  
6 The Secretary shall consider the following  
7 factors in developing and implementing the  
8 prior authorization process under this sub-  
9 paragraph:

10 “(I) Beneficiary access to timely  
11 care.

12 “(II) Alignment with the best  
13 practices of commercial managed care  
14 plans and Medicare Advantage plans  
15 under part C that have expertise in  
16 prior authorization processes.

17 “(III) Implementation of stand-  
18 ard medical necessity evaluation prior  
19 authorization requests for physician  
20 and hospital referral agents and non-  
21 physician practitioners.

22 “(IV) Accounting for same day  
23 delivery expectations by providing for  
24 expedited emergency review for cer-  
25 tain items.

1           “(iii) IMPLEMENTATION.—The Sec-  
2           retary shall promulgate a regulation to  
3           carry out the prior authorization process  
4           under this subparagraph. The regulation  
5           shall—

6                       “(I) ensure that stakeholders  
7                       participate in the development of the  
8                       process; and

9                       “(II) place priority on prior au-  
10                      thorization of items that are subject  
11                      to a high number of contractor audits.

12           “(E) PRIOR AUTHORIZATION PROCESS FOR  
13           HOME RESPIRATORY THERAPY.—

14                      “(i) IN GENERAL.—In the case of  
15                      home respiratory therapy (as defined in  
16                      clause (v)) furnished on or after January  
17                      1, 2019, the Secretary shall establish and  
18                      implement a process under which the Sec-  
19                      retary shall determine, in advance of fur-  
20                      nishing such therapy to an individual,  
21                      whether payment for such therapy may not  
22                      be made under this title because such ther-  
23                      apy is not covered under this title or be-  
24                      cause of the application of section  
25                      1862(a)(1).

1           “(ii) ELEMENTS OF PROCESS.—Under  
2           the process described in clause (i), with re-  
3           spect to home respiratory therapy for an  
4           individual, the following shall apply:

5                   “(I) In order to obtain a prior  
6                   authorization under such process, the  
7                   prescribing practitioner (as defined by  
8                   the Secretary) prescribing such ther-  
9                   apy for such individual shall submit,  
10                  for such therapy and individual—

11                           “(aa) a prescription;

12                           “(bb) in the case of home  
13                           respiratory therapy that is oxy-  
14                           gen or oxygen equipment, a cer-  
15                           tificate of medical necessity; and

16                           “(cc) a prior authorization  
17                           form that includes the informa-  
18                           tion described in subclause (II).

19           A prescription described in item (aa)  
20           with respect to such therapy is not re-  
21           quired under this subclause if a cer-  
22           tificate of medical necessity described  
23           in item (bb) with respect to such ther-  
24           apy is provided and if such certificate  
25           contains a narrative description that

1 includes the elements for a prescrip-  
2 tion, as set forth by the Secretary.

3 “(II) The Secretary shall provide  
4 a prior authorization form (initially on  
5 paper and, not later than 3 years  
6 after the date of the enactment of this  
7 subparagraph, in an electronic for-  
8 mat) for prescribing practitioners (as  
9 so defined by the Secretary) to com-  
10 plete when requesting a prior author-  
11 ization under this subparagraph. The  
12 form shall constitute the complete re-  
13 quest for information to determine  
14 medical necessity and require the pre-  
15 scribing practitioner (as so defined by  
16 the Secretary) to provide each of the  
17 following:

18 “(aa) The date that the in-  
19 dividual was seen by a pre-  
20 scribing practitioner (as so de-  
21 fined by the Secretary) within  
22 the appropriate timeframes for  
23 certification of the need for the  
24 therapy.

1           “(bb) The result of the  
2 original blood gas, saturation test  
3 results, or sleep study results, as  
4 applicable.

5           “(cc) A statement that the  
6 individual needs or is using the  
7 therapy.

8           “(III) The Secretary shall re-  
9 spond to the prescribing practitioner  
10 (as so defined by the Secretary) mak-  
11 ing the prior authorization request  
12 within 72 hours (3 calendar days) of  
13 receiving the request. For hospital  
14 discharges, in the case of home res-  
15 piratory therapy consisting of equip-  
16 ment or supplies, the Secretary shall  
17 establish an expedited review process  
18 to allow for the equipment or supplies  
19 to be delivered on the same day it is  
20 ordered.

21           “(IV) The Secretary shall com-  
22 municate the response to the pre-  
23 scribing practitioner (as so defined by  
24 the Secretary) making the prior au-  
25 thorization request and to the supplier

1 designated on the certificate of med-  
2 ical necessity.

3 “(V) A prior authorization ap-  
4 proved under the process shall be  
5 deemed to constitute medical necessity  
6 for coverage and payment under this  
7 title but shall not eliminate the proof  
8 of delivery documentation requirement  
9 under section 424.57(c)(12) of title  
10 42, Code of Federal Regulations.

11 “(VI) A supplier of home res-  
12 piratory therapy shall not be required  
13 to provide such therapy if a prior au-  
14 thorization request under this sub-  
15 paragraph for such therapy has not  
16 been approved.

17 “(iii) EFFECT OF PRIOR AUTHORIZA-  
18 TION.—The approval of a prior authoriza-  
19 tion request under this subparagraph shall  
20 constitute a finding of medical necessity.  
21 The Secretary may not subject claims with  
22 such a prior authorization to pre- or post-  
23 payment audit for the purpose of deter-  
24 mining medical necessity or improper pay-



1                   ment reviews as they relate to documenting  
2                   medical necessity.

3                   “(iv) IMPLEMENTATION.—The Sec-  
4                   retary may carry out this subparagraph  
5                   through notice and comment rulemaking or  
6                   by interim final rule with comment period.  
7                   In establishing and implementing the proc-  
8                   ess under this subparagraph, the Secretary  
9                   shall consult with stakeholders through  
10                  formal and informal mechanisms.

11                  “(v) HOME RESPIRATORY THERAPY  
12                  DEFINED.—For purposes of this subpara-  
13                  graph, the term ‘home respiratory therapy’  
14                  means—

15                         “(I) equipment, supplies, and  
16                         services for home oxygen, home sleep,  
17                         and mechanical ventilation; and

18                         “(II) any other equipment, sup-  
19                         ply, or service specified by the Sec-  
20                         retary by regulation.”.

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