

109TH CONGRESS
1ST SESSION

H. R. 1333

To amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat Medicare beneficiaries without a requirement for a physician referral, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2005

Ms. HART (for herself, Mr. POMEROY, Mr. BISHOP of Utah, Mr. PLATTS, Mr. SHIMKUS, Mr. MCCOTTER, Mr. ROHRABACHER, Mr. SHUSTER, Mr. NORWOOD, Mr. PAUL, Mr. GARY G. MILLER of California, Mr. BOEHNER, Mr. GERLACH, Mr. YOUNG of Alaska, Mr. ETHERIDGE, Mr. WU, Mr. ROSS, Mr. DICKS, Mr. FORD, Mrs. JO ANN DAVIS of Virginia, Mr. GRIJALVA, Mr. FARR, Mr. KILDEE, Mr. TOWNS, Mr. COOPER, Mr. HINCHEY, Mr. JEFFERSON, Mr. McNULTY, Ms. ROS-LEHTINEN, Mr. WEINER, Mr. TURNER, Mr. WILSON of South Carolina, Mr. ROGERS of Kentucky, Mr. ALEXANDER, Ms. WOOLSEY, Mr. MARIO DIAZ-BALART of Florida, Ms. KILPATRICK of Michigan, Mr. SOUDER, Mr. BRADLEY of New Hampshire, Mr. LINCOLN DIAZ-BALART of Florida, Mr. ROGERS of Alabama, Mr. LANGEVIN, Mr. HOSTETTLER, Mr. MILLER of North Carolina, Mr. GENE GREEN of Texas, Mr. SCHIFF, Mr. BECERRA, and Mr. PITTS) 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

A BILL

To amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat Medicare beneficiaries without a requirement for a physician referral, 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 Patient Ac-
 5 cess to Physical Therapists Act of 2005”.

6 **SEC. 2. ACCESS TO OUTPATIENT PHYSICAL THERAPY SERV-**
 7 **ICES FOR MEDICARE BENEFICIARIES AS AU-**
 8 **THORIZED BY STATE LAW.**

9 (a) IN GENERAL.—

10 (1) ELIMINATION OF REQUIRED PHYSICIAN RE-
 11 FERRAL.—

12 (A) DEFINITION OF OUTPATIENT PHYS-
 13 ICAL THERAPY SERVICES.—Section 1861(p) of
 14 the Social Security Act (42 U.S.C. 1395x(p)) is
 15 amended—

16 (i) in the matter preceding paragraph
 17 (1), by striking “as an outpatient”;

18 (ii) by amending paragraph (1) to
 19 read as follows:

20 “(1) who is an outpatient, and”;

21 (iii) in paragraph (2)—

22 (I) by striking “physician (as so
 23 defined) or by a qualified physical
 24 therapist” and inserting “physician
 25 (as defined in paragraph (1), (3), or

(4) of subsection (r)) or by a qualified physical therapist (as defined in section 1861(bbb))”; and

(II) by inserting “or a qualified physical therapist (as so defined)” after “physician” the second place it appears;

(iv) in paragraph (4)(A)(ii), by striking “one or more” and all that follows through “agency) and”; and

(v) by amending the fifth sentence to read as follows: “Nothing in this subsection shall be construed as authorizing the provision of services in a State that a qualified physical therapist is not authorized to provide in the State in accordance with State law (or the State regulatory mechanism provided by State law).

(B) CONFORMING AMENDMENTS.—Section 1835(a)(2) of the Social Security Act (42 U.S.C. 1395n(a)(2)) is amended—

(i) in the matter preceding subparagraph (A), by inserting “, or in the case of outpatient physical therapy services (as described in subparagraph (C)) and physical

1 therapy services furnished as comprehen-
2 sive outpatient rehabilitation facility serv-
3 ices (described in subparagraph (E)), a
4 qualified physical therapist,” after “a phy-
5 sician”;

6 (ii) in subparagraph (C)—

7 (I) in the matter preceding clause

8 (i), by striking “or outpatient occupa-
9 tional therapy services”;

10 (II) in clause (i), by striking “or
11 occupational therapy services, respec-
12 tively,” and inserting “, and”;

13 (III) in clause (ii), by striking
14 “or qualified occupational therapist,
15 respectively,”; and

16 (IV) beginning in clause (ii), by
17 striking “by a physician, and (iii)”
18 and all that follows and inserting “by
19 a physician or a qualified physical
20 therapist;”;

21 (iii) in subparagraph (D)—

22 (I) in the matter preceding clause

23 (i), by striking “outpatient speech pa-
24 thology services” and inserting “out-
25 patient occupational therapy services

1 or outpatient speech-language pathol-
2 ogy services”;

3 (II) in clause (i), by striking
4 “needed speech pathology services”
5 and inserting “needed occupational
6 therapy services or speech-language
7 pathology services, respectively”; and

8 (III) in clause (ii), by striking
9 “speech pathologist” and inserting
10 “occupational therapist or speech-lan-
11 guage pathologist, respectively,”; and
12 (iv) in subparagraph (E)—

13 (I) in clause (ii), by inserting
14 “(or, in the case of comprehensive
15 outpatient rehabilitation facility serv-
16 ices consisting of physical therapy
17 services, by a qualified physical thera-
18 pist)” after “physician”; and

19 (II) in clause (iii), by inserting
20 “in the case of comprehensive out-
21 patient rehabilitation facility services
22 not consisting of physical therapy
23 services,” before “such services”.

24 (2) DEFINITION OF QUALIFIED PHYSICAL
25 THERAPIST.—Section 1861 of the Social Security

1 Act (42 U.S.C. 1395x) is amended by adding at the
2 end the following new subsection:

3 “Qualified Physical Therapist

4 “(bbb) The term ‘qualified physical therapist’ means
5 an individual who is licensed as a physical therapist by
6 the State in which such individual is practicing and who
7 meets the applicable requirements under paragraph (1) or
8 (2):

9 “(1) With respect to individuals graduating
10 from a professional physical therapy education pro-
11 gram on or after January 1, 2003, the individual—

12 “(A) has received a master’s or doctoral
13 degree from a professional physical therapy
14 education program that has been accredited by
15 a national physical therapy education accredita-
16 tion agency recognized by the Secretary of Edu-
17 cation; or

18 “(B) has graduated from a professional
19 physical therapy education program outside the
20 United States with a curriculum that is sub-
21 stantially equivalent (as determined by an ac-
22 creditation agency described in subparagraph
23 (A)) to the curricula of programs for profes-
24 sional physical therapy education programs in

1 the United States that are accredited by such
2 an accreditation agency.

3 “(2) With respect to individuals licensed as
4 physical therapists by a State before 2003, the indi-
5 vidual was, or upon application to the Secretary
6 could have been, qualified under regulations of the
7 Secretary in effect before such date to furnish phys-
8 ical therapy services under this title, as determined
9 by the Secretary.”.

10 (b) PRESERVING EXISTING LAW FOR OUTPATIENT
11 OCCUPATIONAL THERAPY SERVICES.—

12 (1) DEFINITION.—Section 1861(g) of the Social
13 Security Act (42 U.S.C. 1395x(g)) is amended to
14 read as follows:

15 “Outpatient Occupational Therapy Services
16 “(g) The term ‘outpatient occupational therapy serv-
17 ices’ means occupational therapy services furnished by a
18 provider of services, a clinic, a rehabilitation agency, or
19 a public health agency, or by others under an arrangement
20 with, and under the supervision of, such a provider, clinic,
21 rehabilitation agency, or public health agency to an indi-
22 vidual as an outpatient—

23 “(1) who is under the care of a physician (as
24 defined in paragraph (1), (3), or (4) of subsection
25 (r));

1 “(2) with respect to whom a plan prescribing
2 the type, amount, and duration of occupational ther-
3 apy services that are furnished to such individual
4 has been established by a physician (as so defined)
5 or by an occupational therapist and is periodically
6 reviewed by a physician (as so defined);

7 excluding, however—

8 “(3) any item or service if it would not be in-
9 cluded under subsection (b) if furnished to an inpa-
10 tient of a hospital; and

11 “(4) any such service—

12 “(A) if furnished by a clinic, rehabilitation
13 agency, or by others under arrangements with
14 such clinic or agency, unless such clinic or reha-
15 bilitation agency—

16 “(i) provides an adequate program of
17 occupational therapy services for out-
18 patients and has the facilities and per-
19 sonnel required for such program or re-
20 quired for the supervision of such a pro-
21 gram, in accordance with such require-
22 ments as the Secretary may specify;

23 “(ii) has policies, established by a
24 group of professional personnel, including
25 one or more occupational therapists, to

1 govern the services (referred to in clause
2 (i)) it provides;

3 “(iii) maintains clinical records on all
4 patients;

5 “(iv) if such clinic or agency is situ-
6 ated in a State in which State or applica-
7 ble local law provides for the licensing of
8 institutions of this nature—

9 “(I) is licensed pursuant to such
10 law, or

11 “(II) is approved by the agency
12 of such State or locality responsible
13 for licensing institutions of this na-
14 ture, as meeting the standards estab-
15 lished for such licensing; and

16 “(v) meets such other conditions relat-
17 ing to the health and safety of individuals
18 who are furnished services by such clinic or
19 agency on an outpatient basis, as the Sec-
20 retary may find necessary, and provides
21 the Secretary on a continuing basis with a
22 surety bond that is not less than \$50,000;
23 or

24 “(B) if furnished by a public health agen-
25 cy, unless such agency meets such other condi-

1 tions relating to the safety of individuals who
2 are furnished services by such agency on an
3 outpatient basis, as the Secretary may find nec-
4 essary.

5 The term ‘outpatient occupational therapy services’ also
6 includes occupational therapy services furnished an indi-
7 vidual by an occupational therapist (in the office of the
8 occupational therapist or in such individual’s home) who
9 meets licensing and other standards prescribed by the Sec-
10 retary in regulations, otherwise than under an arrange-
11 ment with and under the supervision of a provider of serv-
12 ices, clinic, rehabilitation agency, or public health agency,
13 if the furnishing of such services meets such conditions
14 relating to health and safety as the Secretary may find
15 necessary. In addition, such term includes occupational
16 therapy services that meet the requirements of the first
17 sentence of this subsection except that they are furnished
18 to an inpatient of a hospital or extended care facility.
19 Nothing in this subsection shall be construed as requiring,
20 with respect to outpatients who are not entitled to benefits
21 under this title, an occupational therapist to provide out-
22 patient occupational therapy services only to outpatients
23 who are under the care of a physician or pursuant to a
24 plan of care established by a physician. The Secretary may
25 waive the requirement of a surety bond under paragraph

1 (4)(A)(v) in the case of a clinic or agency that provides
 2 a comparable surety bond under State law.”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) SCOPE OF BENEFITS.—Section
 5 1832(a)(2)(C) of the Social Security Act (42
 6 U.S.C. 1395k(a)(2)(C)) is amended by striking
 7 “such sentence applies through the operation of
 8 section 1861(g))” and inserting “the second
 9 sentence of section 1861(g) applies)”.

10 (B) PAYMENT OF BENEFITS.—Section
 11 1833(g)(3) of the Social Security Act (42
 12 U.S.C. 1395l(g)(3)) is amended by striking
 13 “section 1861(p))” and all that follows through
 14 “section 1861(g))” and inserting “section
 15 1861(g) (but not described in subsection
 16 (a)(8)(B))”.

17 (C) PROVIDER CLAIMS PROCEDURES.—The
 18 second sentence of section 1835(a) of the Social
 19 Security Act (42 U.S.C. 1395n(a)) is amend-
 20 ed—

21 (i) by striking “section 1861(p)(4)(A)
 22 (or meets the requirements of such section
 23 through the operation of section 1861(g))”
 24 and inserting “section 1861(p)(4)(A) or
 25 section 1861(g)(4)(A)”;

1 (ii) by striking “section 1861(p)(4)(B)
 2 (or meets the requirements of such section
 3 through the operation of section 1861(g))”
 4 and inserting “section 1861(p)(4)(B) or
 5 section 1861(g)(4)(B)”; and

6 (iii) by striking “(as therein defined)
 7 or (through the operation of section
 8 1861(g)) with respect to the furnishing of
 9 outpatient occupational therapy services”
 10 and inserting “(as defined in section
 11 1861(p)) or outpatient occupational ther-
 12 apy services (as defined in section
 13 1861(g)), respectively”.

14 (D) AGREEMENTS WITH PROVIDERS.—Sec-
 15 tion 1866(e)(1) of the Social Security Act (42
 16 U.S.C. 1395cc(e)(1)) is amended—

17 (i) by striking “section 1861(p)(4)(A)
 18 (or meets the requirements of such section
 19 through the operation of section 1861(g))”
 20 and inserting “section 1861(p)(4)(A) or
 21 section 1861(g)(4)(A)”; and

22 (ii) by striking “section 1861(p)(4)(B)
 23 (or meets the requirements of such section
 24 through the operation of section 1861(g))”

1 and inserting “section 1861(p)(4)(B) or
 2 section 1861(g)(4)(B)”;

3 (iii) by striking “(as therein defined)
 4 or (through the operation of section
 5 1861(g)) with respect to the furnishing of
 6 outpatient occupational therapy services”
 7 and inserting “(as defined in section
 8 1861(p)) or outpatient occupational ther-
 9 apy services (as defined in section
 10 1861(g)), respectively”.

11 (c) SEPARATE STATUTORY TREATMENT FOR OUT-
 12 PATIENT PHYSICAL THERAPY SERVICES AND OUT-
 13 PATIENT SPEECH-LANGUAGE PATHOLOGY SERVICES.—

14 (1) SCOPE OF BENEFITS.—Section
 15 1832(a)(2)(C) of the Social Security Act (42 U.S.C.
 16 1395k(a)(2)(C)), as amended by subsection
 17 (b)(2)(A), is amended—

18 (A) by striking “and outpatient” and in-
 19 serting “, outpatient”; and

20 (B) by inserting before the semicolon the
 21 following: “, and outpatient speech-language pa-
 22 thology services”.

23 (2) PAYMENT OF BENEFITS.—Section 1833 of
 24 the Social Security Act (42 U.S.C. 1395l) is amend-
 25 ed—

(A) in subparagraphs (A) and (B) of subsection (a)(8), by striking “services, (which includes outpatient speech-language pathology services) and outpatient occupational therapy services” each place it appears and inserting “services, outpatient occupational therapy services, and outpatient speech-language pathology services”; and

(B) in subsection (g)—

(i) in paragraphs (1) and (3), by striking “paragraph (4)” each place it appears and inserting “paragraph (5)”; and

(ii) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3) the following new paragraph:

“(4) Subject to paragraph (5), in the case of speech-language pathology services (of the type described in section 1861(ll)(4) (but not described in subsection (a)(8)(B)) and speech-language pathology services of such type that are furnished by a physician or as incident to physicians’ services), with respect to expenses incurred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b).”.

1 (3) PROVIDER CLAIMS PROCEDURES.—The sec-
2 ond sentence of section 1835(a) of the Social Secu-
3 rity Act (42 U.S.C. 1395n(a)), as amended by sub-
4 section (b)(2)(C), is amended—

5 (A) by striking “or section 1861(g)(4)(A)”
6 and inserting “, section 1861(g)(4)(A), or sec-
7 tion 1861(ll)(5)(A)”;

8 (B) by striking “or section 1861(g)(4)(B)”
9 and inserting “, section 1861(g)(4)(B), or sec-
10 tion 1861(ll)(4)(B)(ii)(II)”;

11 (C) by striking “or outpatient occupational
12 services (as defined in section 1861(g))” and
13 inserting “, outpatient occupational services (as
14 defined in section 1861(g)), or outpatient
15 speech-language pathology services (as defined
16 in section 1861(ll)(4)(A))”.

17 (4) AGREEMENTS WITH PROVIDERS.—Section
18 1866(e)(1) of the Social Security Act (42 U.S.C.
19 1395cc(e)(1)), as amended by subsection (b)(2)(D),
20 is amended—

21 (A) by striking “or section 1861(g)(4)(A)”
22 and inserting “1861(g)(4)(A), or section
23 1861(ll)(5)(A)”;

1 (B) by striking “or section 1861(g)(4)(B)”
 2 and inserting “, section 1861(g)(4)(B), or sec-
 3 tion 1861(ll)(4)(B)(ii)(II)”; and

4 (C) by striking “or outpatient occupational
 5 services (as defined in section 1861(g))” and
 6 inserting “, outpatient occupational services (as
 7 defined in section 1861(g)), or outpatient
 8 speech-language pathology services (as defined
 9 in section 1861(ll)(4)(A))”.

10 (5) DEFINITIONS.—Section 1861 of the Social
 11 Security Act (42 U.S.C. 1395x) is amended—

12 (A) in subsection (p), by striking the
 13 fourth sentence;

14 (B) in subsection (s)(2)(D), by striking
 15 “services and outpatient occupational therapy
 16 services” and inserting “services, outpatient oc-
 17 cupational therapy services, and outpatient
 18 speech-language pathology services”; and

19 (C) in subsection (ll), by adding at the end
 20 the following new paragraphs:

21 “(4)(A) Subject to subparagraph (B), the term ‘out-
 22 patient speech-language pathology services’ means speech-
 23 language pathology services that are furnished by a pro-
 24 vider of services, a clinic, a rehabilitation agency, or a pub-
 25 lic health agency, or by others under an arrangement with,

1 and under the supervision of, such provider, clinic, reha-
2 bilitation agency, or public health agency to an individual
3 as an outpatient—

4 “(i) who is under the care of a physician (as de-
5 fined in paragraph (1), (3), or (4) of subsection (r));
6 and

7 “(ii) with respect to whom a plan prescribing
8 the type, amount, and duration of speech-language
9 pathology services that are furnished to such indi-
10 vidual has been established by a physician (as so de-
11 fined) or by a qualified speech-language pathologist
12 and is periodically reviewed by a physician (as so de-
13 fined).

14 “(B) Such term does not include—

15 “(i) any item or service if it would not be in-
16 cluded under subsection (b) if furnished to an inpa-
17 tient of a hospital; or

18 “(ii) any item or service—

19 “(I) if furnished by a clinic, rehabilitation
20 agency, or by others under arrangements with
21 such clinic or agency, unless such clinic or reha-
22 bilitation agency meets the requirements of
23 paragraph (5); and

24 “(II) if furnished by a public health agen-
25 cy, unless such agency meets such other condi-

1 tions relating to the safety of individuals who
2 are furnished services by such agency on an
3 outpatient basis, as the Secretary may find nec-
4 essary.

5 “(C) Such term also includes speech-language pathol-
6 ogy services that meet the requirements of the preceding
7 sentence except that they are furnished to an inpatient
8 of a hospital or extended care facility. Nothing in this sub-
9 section shall be construed as requiring, with respect to
10 outpatients who are not entitled to benefits under this
11 title, a speech-language pathologist to provide outpatient
12 speech-language pathology services only to outpatients
13 who are under the care of a physician or pursuant to a
14 plan of care established by a physician. The Secretary may
15 waive the requirement of a surety bond under paragraph
16 (5)(E) in the case of a clinic or agency that provides a
17 comparable surety bond under State law.

18 “(5) A clinic or rehabilitation agency meets the re-
19 quirements of this paragraph if it—

20 “(A) provides an adequate program of speech-
21 language pathology services for outpatients and has
22 the facilities and personnel required for such pro-
23 gram or required for the supervision of such a pro-
24 gram, in accordance with such requirements as the
25 Secretary may specify;

1 “(B) has policies, established by a group of pro-
 2 fessional personnel, including one or more speech-
 3 language pathologists, to govern the services (re-
 4 ferred to in subparagraph (A)) it provides;

5 “(C) maintains clinical records on all patients;

6 “(D) in the case of a clinic or agency that is
 7 situated in a State in which State or applicable local
 8 law provides for the licensing of institutions of this
 9 nature—

10 “(i) is licensed pursuant to such law, or

11 “(ii) is approved by the agency of such
 12 State or locality responsible for licensing insti-
 13 tutions of this nature, as meeting the standards
 14 established for such licensing; and

15 “(E) meets such other conditions relating to the
 16 health and safety of individuals who are furnished
 17 services by such clinic or agency on an outpatient
 18 basis, as the Secretary may find necessary, and pro-
 19 vides the Secretary on a continuing basis with a sur-
 20 ety bond that is not less than \$50,000.”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to items and services furnished on
 23 or after January 1, 2006.

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