

111TH CONGRESS
1ST SESSION

H. R. 1829

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 31, 2009

Mr. POMEROY (for himself, Mr. TIM MURPHY of Pennsylvania, Ms. BALDWIN, Ms. DELAURO, Mr. RUPPERSBERGER, Mr. ROSS, Mr. OLVER, Mr. TURNER, Mr. FARR, Mr. KIRK, Mr. PITTS, Mr. GERLACH, Mr. HIGGINS, Mr. CHANDLER, Mr. MORAN of Kansas, Mr. ROGERS of Kentucky, Mr. INSLEE, Mr. GRAVES, Mr. SHUSTER, Mr. CONAWAY, Mr. MICHAUD, Mr. PAUL, Mr. LANGEVIN, Mr. HINCHEY, Mr. BISHOP of Utah, Mr. PLATTS, Mrs. EMERSON, Mr. BLUMENAUER, Mr. MEEK of Florida, Mr. SESTAK, Mr. NEAL of Massachusetts, Mr. SHIMKUS, Mr. WILSON of South Carolina, Mr. PUTNAM, Mr. MCGOVERN, Mr. BUTTERFIELD, Mr. LINCOLN DIAZ-BALART of Florida, Mr. DEFazio, Mr. ISRAEL, Mr. BISHOP of Georgia, Mr. TIERNEY, Mr. ROHRABACHER, Mrs. CAPPS, Mr. LOEBSACK, Mr. GRIJALVA, Mr. ROGERS of Alabama, Mr. ELLISON, Mr. OBERSTAR, Mr. WU, Mr. FRANKS of Arizona, Mrs. MALONEY, Mr. JONES, Mr. GARY G. MILLER of California, Mr. YOUNG of Alaska, Mr. GENE GREEN of Texas, Mr. KILDEE, and Mr. ALTMIRE) 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 2009”.

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 subsection (hhh))”; 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 physicians” 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 “(hhh) 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, 2005, 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 2005, 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)”;

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)”; and
 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—

1 (A) in subparagraphs (A) and (B) of sub-
2 section (a)(8), by striking “services, (which in-
3 cludes outpatient speech-language pathology
4 services) and outpatient occupational therapy
5 services” each place it appears and inserting
6 “services, outpatient occupational therapy serv-
7 ices, and outpatient speech-language pathology
8 services”; and

9 (B) in subsection (g)—

10 (i) in paragraphs (1) and (3), by
11 striking “paragraphs (4) and (5)” and in-
12 serting “paragraphs (5) and (6)” each
13 place it appears;

14 (ii) by redesignating paragraphs (4)
15 and (5) as paragraphs (5) and (6), respec-
16 tively, and inserting after paragraph (3)
17 the following new paragraph:

18 “(4) Subject to paragraphs (5) and (6), in the
19 case of speech-language pathology services (of the
20 type described in section 1861(l)(5) (but not de-
21 scribed in subsection (a)(8)(B)) and speech-language
22 pathology services of such type that are furnished by
23 a physician or as incident to physicians’ services),
24 with respect to expenses incurred in any calendar
25 year, no more than the amount specified in para-

graph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b).”; and

(iii) in paragraph (5), by striking “paragraphs (1) and (3)” and inserting “paragraphs (1), (3), and (4)”.

(3) PROVIDER CLAIMS PROCEDURES.—The second sentence of section 1835(a) of the Social Security Act (42 U.S.C. 1395n(a)), as amended by subsection (b)(2)(C), is amended—

(A) by striking “or section 1861(g)(4)(A)” and inserting “, section 1861(g)(4)(A), or section 1861(ll)(6)(A)”;

(B) by striking “or section 1861(g)(4)(B)” and inserting “, section 1861(g)(4)(B), or section 1861(ll)(5)(B)(ii)(II)”;

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

(4) AGREEMENTS WITH PROVIDERS.—Section 1866(e)(1) of the Social Security Act (42 U.S.C.

1 1395cc(e)(1)), as amended by subsection (b)(2)(D),
 2 is amended—

3 (A) by striking “or section 1861(g)(4)(A)”
 4 and inserting “1861(g)(4)(A), or section
 5 1861(ll)(6)(A)”;

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

9 (C) by striking “or outpatient occupational
 10 services (as defined in section 1861(g))” and
 11 inserting “, outpatient occupational services (as
 12 defined in section 1861(g)), or outpatient
 13 speech-language pathology services (as defined
 14 in section 1861(ll)(5)(A))”.

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

17 (A) in subsection (p), by striking the
 18 fourth sentence;

19 (B) in subsection (s)(2)(D), by striking
 20 “services and outpatient occupational therapy
 21 services” and inserting “services, outpatient oc-
 22 cupational therapy services, and outpatient
 23 speech-language pathology services”;

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

1 “(5)(A) Subject to subparagraph (B), the term ‘out-
2 patient speech-language pathology services’ means speech-
3 language pathology services that are furnished by a pro-
4 vider of services, a clinic, a rehabilitation agency, or a pub-
5 lic health agency, or by others under an arrangement with,
6 and under the supervision of, such provider, clinic, reha-
7 bilitation agency, or public health agency to an individual
8 as an outpatient—

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

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

19 “(B) Such term does not include—

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

23 “(ii) any item or service—

24 “(I) if furnished by a clinic, rehabilitation
25 agency, or by others under arrangements with

1 such clinic or agency, unless such clinic or reha-
2 bilitation agency meets the requirements of
3 paragraph (6); and

4 “(II) if furnished by a public health agen-
5 cy, unless such agency meets such other condi-
6 tions relating to the safety of individuals who
7 are furnished services by such agency on an
8 outpatient basis, as the Secretary may find nec-
9 essary.

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

23 “(6) A clinic or rehabilitation agency meets the re-
24 quirements of this paragraph if it—

1 “(A) provides an adequate program of speech-
2 language pathology services for outpatients and has
3 the facilities and personnel required for such pro-
4 gram or required for the supervision of such a pro-
5 gram, in accordance with such requirements as the
6 Secretary may specify;

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

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

12 “(D) in the case of a clinic or agency that is
13 situated in a State in which State or applicable local
14 law provides for the licensing of institutions of this
15 nature—

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

17 “(ii) is approved by the agency of such
18 State or locality responsible for licensing insti-
19 tutions of this nature, as meeting the standards
20 established for such licensing; and

21 “(E) meets such other conditions relating to the
22 health and safety of individuals who are furnished
23 services by such clinic or agency on an outpatient
24 basis, as the Secretary may find necessary, and pro-

1 vides the Secretary on a continuing basis with a sur-
2 ety bond that is not less than \$50,000.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to items and services furnished on
5 or after January 1, 2010.

○