

111TH CONGRESS
1ST SESSION

S. 950

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 SENATE OF THE UNITED STATES

APRIL 30, 2009

Mrs. LINCOLN (for herself, Mr. GRAHAM, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

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

4 (a) IN GENERAL.—

5 (1) ELIMINATION OF REQUIRED PHYSICIAN RE-
 6 FERRAL.—

7 (A) DEFINITION OF OUTPATIENT PHYS-
 8 ICAL THERAPY SERVICES.—Section 1861(p) of
 9 the Social Security Act (42 U.S.C. 1395x(p)) is
 10 amended—

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

13 (ii) by amending paragraph (1) to
 14 read as follows:

15 “(1) who is an outpatient, and”;

16 (iii) in paragraph (2)—

17 (I) by striking “physician (as so
 18 defined) or by a qualified physical
 19 therapist” and inserting “physician
 20 (as defined in paragraph (1), (3), or
 21 (4) of subsection (r)) or by a qualified
 22 physical therapist (as defined in sub-
 23 section (hhh))”; and

24 (II) by inserting “or a qualified
 25 physical therapist (as so defined)”

1 after “physician” the second place it
 2 appears;

3 (iv) in paragraph (4)(A)(ii), by strik-
 4 ing “one or more physicians” and all that
 5 follows through “agency) and”; and

6 (v) by amending the fifth sentence to
 7 read as follows: “Nothing in this sub-
 8 section shall be construed as authorizing
 9 the provision of services in a State that a
 10 qualified physical therapist is not author-
 11 ized to provide in the State in accordance
 12 with State law (or the State regulatory
 13 mechanism provided by State law).”

14 (B) CONFORMING AMENDMENTS.—Section
 15 1835(a)(2) of the Social Security Act (42
 16 U.S.C. 1395n(a)(2)) is amended—

17 (i) in the matter preceding subpara-
 18 graph (A), by inserting “, or in the case of
 19 outpatient physical therapy services (as de-
 20 scribed in subparagraph (C)) and physical
 21 therapy services furnished as comprehen-
 22 sive outpatient rehabilitation facility serv-
 23 ices (described in subparagraph (E)), a
 24 qualified physical therapist,” after “a phy-
 25 sician”;

1 (ii) in subparagraph (C)—

2 (I) in the matter preceding clause
3 (i), by striking “or outpatient occupa-
4 tional therapy services”;

5 (II) in clause (i), by striking “or
6 occupational therapy services, respec-
7 tively,” and inserting “, and”;

8 (III) in clause (ii), by striking
9 “or qualified occupational therapist,
10 respectively,”; and

11 (IV) beginning in clause (ii), by
12 striking “by a physician, and (iii)”
13 and all that follows and inserting “by
14 a physician or a qualified physical
15 therapist;”;

16 (iii) in subparagraph (D)—

17 (I) in the matter preceding clause
18 (i), by striking “outpatient speech pa-
19 thology services” and inserting “out-
20 patient occupational therapy services
21 or outpatient speech-language pathol-
22 ogy services”;

23 (II) in clause (i), by striking
24 “needed speech pathology services”
25 and inserting “needed occupational

1 therapy services or speech-language
2 pathology services, respectively”; and

3 (III) in clause (ii), by striking
4 “speech pathologist” and inserting
5 “occupational therapist or speech-lan-
6 guage pathologist, respectively,”; and
7 (iv) in subparagraph (E)—

8 (I) in clause (ii), by inserting
9 “(or, in the case of comprehensive
10 outpatient rehabilitation facility serv-
11 ices consisting of physical therapy
12 services, by a qualified physical thera-
13 pist)” after “physician”; and

14 (II) in clause (iii), by inserting
15 “in the case of comprehensive out-
16 patient rehabilitation facility services
17 not consisting of physical therapy
18 services,” before “such services”.

19 (2) DEFINITION OF QUALIFIED PHYSICAL
20 THERAPIST.—Section 1861 of the Social Security
21 Act (42 U.S.C. 1395x) is amended by adding at the
22 end the following new subsection:

23 “Qualified Physical Therapist

24 “(hhh) The term ‘qualified physical therapist’ means
25 an individual who is licensed as a physical therapist by

1 the State in which such individual is practicing and who
2 meets the applicable requirements under paragraph (1) or
3 (2):

4 “(1) With respect to individuals graduating
5 from a professional physical therapy education pro-
6 gram on or after January 1, 2005, the individual—

7 “(A) has received a master’s or doctoral
8 degree from a professional physical therapy
9 education program that has been accredited by
10 a national physical therapy education accredita-
11 tion agency recognized by the Secretary of Edu-
12 cation; or

13 “(B) has graduated from a professional
14 physical therapy education program outside the
15 United States with a curriculum that is sub-
16 stantially equivalent (as determined by an ac-
17 creditation agency described in subparagraph
18 (A)) to the curricula of programs for profes-
19 sional physical therapy education programs in
20 the United States that are accredited by such
21 an accreditation agency.

22 “(2) With respect to individuals licensed as
23 physical therapists by a State before 2005, the indi-
24 vidual was, or upon application to the Secretary
25 could have been, qualified under regulations of the

1 Secretary in effect before such date to furnish phys-
 2 ical therapy services under this title, as determined
 3 by the Secretary.”.

4 (b) PRESERVING EXISTING LAW FOR OUTPATIENT
 5 OCCUPATIONAL THERAPY SERVICES.—

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

9 “Outpatient Occupational Therapy Services

10 “(g) The term ‘outpatient occupational therapy serv-
 11 ices’ means occupational therapy services furnished by a
 12 provider of services, a clinic, a rehabilitation agency, or
 13 a public health agency, or by others under an arrangement
 14 with, and under the supervision of, such a provider, clinic,
 15 rehabilitation agency, or public health agency to an indi-
 16 vidual as an outpatient—

17 “(1) who is under the care of a physician (as
 18 defined in paragraph (1), (3), or (4) of subsection
 19 (r));

20 “(2) with respect to whom a plan prescribing
 21 the type, amount, and duration of occupational ther-
 22 apy services that are furnished to such individual
 23 has been established by a physician (as so defined)
 24 or by an occupational therapist and is periodically
 25 reviewed by a physician (as so defined);

1 excluding, however—

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

5 “(4) any such service—

6 “(A) if furnished by a clinic, rehabilitation
7 agency, or by others under arrangements with
8 such clinic or agency, unless such clinic or reha-
9 bilitation agency—

10 “(i) provides an adequate program of
11 occupational therapy services for out-
12 patients and has the facilities and per-
13 sonnel required for such program or re-
14 quired for the supervision of such a pro-
15 gram, in accordance with such require-
16 ments as the Secretary may specify;

17 “(ii) has policies, established by a
18 group of professional personnel, including
19 one or more occupational therapists, to
20 govern the services (referred to in clause
21 (i)) it provides;

22 “(iii) maintains clinical records on all
23 patients;

24 “(iv) if such clinic or agency is situ-
25 ated in a State in which State or applica-

1 ble local law provides for the licensing of
 2 institutions of this nature—

3 “(I) is licensed pursuant to such
 4 law, or

5 “(II) is approved by the agency
 6 of such State or locality responsible
 7 for licensing institutions of this na-
 8 ture, as meeting the standards estab-
 9 lished for such licensing; and

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

18 “(B) if furnished by a public health agen-
 19 cy, unless such agency meets such other condi-
 20 tions relating to the safety of individuals who
 21 are furnished services by such agency on an
 22 outpatient basis, as the Secretary may find nec-
 23 essary.

24 The term ‘outpatient occupational therapy services’ also
 25 includes occupational therapy services furnished an indi-

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

22 (2) CONFORMING AMENDMENTS.—

23 (A) SCOPE OF BENEFITS.—Section
 24 1832(a)(2)(C) of the Social Security Act (42
 25 U.S.C. 1395k(a)(2)(C)) is amended by striking

1 “such sentence applies through the operation of
 2 section 1861(g))” and inserting “the second
 3 sentence of section 1861(g) applies)”.

4 (B) PAYMENT OF BENEFITS.—Section
 5 1833(g)(3) of the Social Security Act (42
 6 U.S.C. 1395l(g)(3)) is amended by striking
 7 “section 1861(p)” and all that follows through
 8 “section 1861(g)” and inserting “section
 9 1861(g) (but not described in subsection
 10 (a)(8)(B))”.

11 (C) PROVIDER CLAIMS PROCEDURES.—The
 12 second sentence of section 1835(a) of the Social
 13 Security Act (42 U.S.C. 1395n(a)) is amend-
 14 ed—

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

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

(iii) by striking “(as therein defined) or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services” and inserting “(as defined in section 1861(p)) or outpatient occupational therapy services (as defined in section 1861(g)), respectively”.

(D) AGREEMENTS WITH PROVIDERS.—Section 1866(e)(1) of the Social Security Act (42 U.S.C. 1395cc(e)(1)) is amended—

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

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

(iii) by striking “(as therein defined) or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services”

1 and inserting “(as defined in section
 2 1861(p)) or outpatient occupational ther-
 3 apy services (as defined in section
 4 1861(g)), respectively”.

5 (c) SEPARATE STATUTORY TREATMENT FOR OUT-
 6 PATIENT PHYSICAL THERAPY SERVICES AND OUT-
 7 PATIENT SPEECH-LANGUAGE PATHOLOGY SERVICES.—

8 (1) SCOPE OF BENEFITS.—Section
 9 1832(a)(2)(C) of the Social Security Act (42 U.S.C.
 10 1395k(a)(2)(C)), as amended by subsection
 11 (b)(2)(A), is amended—

12 (A) by striking “and outpatient” and in-
 13 serting “, outpatient”; and

14 (B) by inserting before the semicolon the
 15 following: “, and outpatient speech-language pa-
 16 thology services”.

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

20 (A) in subparagraphs (A) and (B) of sub-
 21 section (a)(8), by striking “services, (which in-
 22 cludes outpatient speech-language pathology
 23 services) and outpatient occupational therapy
 24 services” each place it appears and inserting
 25 “services, outpatient occupational therapy serv-

1 ices, and outpatient speech-language pathology
2 services”; and

3 (B) in subsection (g)—

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

8 (ii) by redesignating paragraphs (4)
9 and (5) as paragraphs (5) and (6), respec-
10 tively, and inserting after paragraph (3)
11 the following new paragraph:

12 “(4) Subject to paragraphs (5) and (6), in the
13 case of speech-language pathology services (of the
14 type described in section 1861(ll)(5) (but not de-
15 scribed in subsection (a)(8)(B)) and speech-language
16 pathology services of such type that are furnished by
17 a physician or as incident to physicians’ services),
18 with respect to expenses incurred in any calendar
19 year, no more than the amount specified in para-
20 graph (2) for the year shall be considered as in-
21 curred expenses for purposes of subsections (a) and
22 (b).”; and

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

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)(6)(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)(5)(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)(5)(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 “, section 1861(g)(4)(A), or sec-
 23 tion 1861(ll)(6)(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)(5)(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)(5)(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 “(5)(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 (6); 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 “(6) 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, 2010.

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