

113TH CONGRESS
2D SESSION

H. R. 5083

To amend title XVIII of the Social Security Act to improve audit effectiveness and efficiency in paying for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) under the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2014

Mrs. ELLMERS (for herself, Mr. BARROW of Georgia, Mr. BRALEY of Iowa, Mr. DUNCAN of Tennessee, and Mr. THOMPSON of Pennsylvania) 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 improve audit effectiveness and efficiency in paying for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) under the Medicare program, 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 DMEPOS
5 Audit Improvement and Reform (AIR) Act of 2014”.

1 **SEC. 2. IMPROVING MEDICARE AUDIT EFFECTIVENESS AND**
2 **EFFICIENCY FOR DURABLE MEDICAL EQUIP-**
3 **MENT, PROSTHETICS, ORTHOTICS, AND SUP-**
4 **PLIES (DMEPOS).**

5 (a) MEDICARE ADMINISTRATIVE CONTRACTOR PAY-
6 MENT OUTREACH AND EDUCATION PROGRAM FOR
7 DMEPOS SUPPLIERS.—

8 (1) IN GENERAL.—Section 1874A of the Social
9 Security Act (42 U.S.C. 1395kk–1) is amended—

10 (A) in subsection (a)(4)—

11 (i) by redesignating subparagraph (G)
12 as subparagraph (H); and

13 (ii) by inserting after subparagraph
14 (F) the following new subparagraph:

15 “(G) PAYMENT OUTREACH AND EDU-
16 CATION PROGRAM FOR SUPPLIERS OF DURABLE
17 MEDICAL EQUIPMENT, PROSTHETICS,
18 ORTHOTICS, AND SUPPLIES (DMEPOS).—Imple-
19 menting a payment outreach and education pro-
20 gram for DMEPOS suppliers under subsection
21 (h).”; and

22 (B) by adding at the end the following new
23 subsection:

24 “(h) PAYMENT OUTREACH AND EDUCATION PRO-
25 GRAM FOR DMEPOS SUPPLIERS.—

1 “(1) IN GENERAL.—In order to reduce im-
2 proper payments under part B for durable medical
3 equipment, prosthetics, orthotics, and supplies, each
4 medicare administrative contractor that has respon-
5 sibility for payment under such part for durable
6 medical equipment, prosthetics, orthotics, and sup-
7 plies furnished in an area (in this subsection re-
8 ferred to as a ‘Medicare DMEPOS contractor’) shall
9 carry out a program (in this subsection referred to
10 as the ‘DMEPOS payment outreach and education
11 program’) under which the contractor, through out-
12 reach, education, training, and technical assistance
13 activities conducted on a quarterly basis, provides
14 DMEPOS suppliers, physicians and practitioners
15 who prescribe DMEPOS, and discharge planners
16 and case managers who coordinate DMEPOS for in-
17 dividuals in such area with the information described
18 in paragraph (3) and with error reduction training
19 under paragraph (4).

20 “(2) FORMS OF ACTIVITIES.—The activities
21 under a DMEPOS payment outreach and education
22 program shall include the following:

23 “(A) Emails and other electronic commu-
24 nications.

25 “(B) Webinars.

1 “(C) Telephone calls.

2 “(D) In-person training.

3 “(E) Other forms of communications and
4 assistance determined appropriate by the Sec-
5 retary.

6 “(3) INFORMATION TO BE PROVIDED THROUGH
7 ACTIVITIES.—The information to be provided under
8 a DMEPOS payment outreach and education pro-
9 gram, with respect to payment for DMEPOS under
10 part B, shall include all of the following information:

11 “(A) A list of suppliers’ most frequent pay-
12 ment errors and most expensive payment errors
13 over the last quarter.

14 “(B) Specific instructions regarding how to
15 correct or avoid such errors in the future.

16 “(C) A notice of all new topics that have
17 been approved by the Secretary for audits con-
18 ducted by Medicare contractors in relation to
19 payment for DMEPOS under part B.

20 “(D) Specific instructions to prevent fu-
21 ture issues related to such new audits.

22 “(E) Other information determined appro-
23 priate by the Secretary.

24 “(4) ERROR RATE REDUCTION TRAINING.—

1 “(A) IN GENERAL.—The activities under a
2 DMEPOS payment outreach and education pro-
3 gram shall include error rate reduction training.

4 “(B) REQUIREMENTS.—Such training
5 shall—

6 “(i) be provided at least annually; and

7 “(ii) focus on reducing improper
8 Medicare payments for DMEPOS.

9 “(C) INVITATION.—A Medicare DMEPOS
10 contractor with responsibility for payment for
11 DMEPOS in an area shall ensure that all
12 DMEPOS suppliers, physicians and practi-
13 tioners who prescribe DMEPOS, and discharge
14 planners and case managers who coordinate
15 DMEPOS for individuals in the area are invited
16 to attend the training described in subpara-
17 graph (A) either in person or online.

18 “(5) PRIORITY.—A Medicare DMEPOS con-
19 tractor shall give priority to activities under the
20 DMEPOS payment outreach and education program
21 that will reduce improper Medicare payments based
22 on technical errors, medical necessity, and fraud for
23 DMEPOS that—

24 “(A) have the highest rate of improper
25 payment under part B;

1 “(B) have the greatest total dollar amount
2 of such improper payments;

3 “(C) are due to clear misapplication or
4 misinterpretation of policies under this title;

5 “(D) are clearly due to common and inad-
6 vertent clerical or administrative errors; or

7 “(E) are due to other types of errors that
8 the Secretary determines could be prevented
9 through activities under the program.

10 “(6) INFORMATION ON IMPROPER PAYMENTS
11 FROM MEDICARE CONTRACTORS.—

12 “(A) IN GENERAL.—In order to assist
13 Medicare DMEPOS contractors in carrying out
14 DMEPOS payment outreach and education pro-
15 grams, the Secretary shall provide each such
16 contractor with a complete list of improper pay-
17 ments for DMEPOS identified by recovery
18 audit contractors (and other contractors per-
19 forming audit activities relating to payment for
20 DMEPOS) with respect to suppliers located in
21 the area being serviced by the Medicare
22 DMEPOS contractor. Such list shall not in-
23 clude claims for payments that have been de-
24 nied and are being appealed by the supplier

1 under section 1869. Such information shall be
2 provided on a quarterly basis.

3 “(B) INFORMATION.—The information de-
4 scribed in subparagraph (A) shall include the
5 following information:

6 “(i) The suppliers of DMEPOS that
7 have the highest rate of improper pay-
8 ments under part B for DMEPOS.

9 “(ii) The suppliers of DMEPOS that
10 have the greatest total dollar amounts of
11 such improper payments.

12 “(iii) The DMEPOS furnished in the
13 area that has the highest rates of such im-
14 proper payments.

15 “(iv) The DMEPOS furnished in the
16 area that is responsible for the greatest
17 total dollar amount of such improper pay-
18 ments.

19 “(v) Other information the Secretary
20 determines would assist Medicare
21 DMEPOS contractors in carrying out the
22 DMEPOS payment outreach and education
23 program.

24 “(C) FORMAT OF INFORMATION.—The in-
25 formation furnished to Medicare DMEPOS con-

1 tractors by the Secretary under this paragraph
2 shall be transmitted in a manner that permits
3 such contractors to easily identify the
4 DMEPOS suppliers for which targeted out-
5 reach, education, training, and technical assist-
6 ance would be most effective. In carrying out
7 the preceding sentence, the Secretary shall en-
8 sure that—

9 “(i) the information with respect to
10 improper payments made to such a sup-
11 plier clearly displays the NPI or other
12 identifier of the supplier, the amount of
13 the improper payment, and any other in-
14 formation the Secretary determines appro-
15 priate; and

16 “(ii) the information is in an elec-
17 tronic, easily searchable database.

18 “(7) COMMUNICATIONS.—All communications
19 with a supplier under a DMEPOS payment outreach
20 and education program are subject to the standards
21 and requirements of subsection (g).

22 “(8) ADVANCE NOTICE FOR POLICY CHANGES
23 AND CLARIFICATIONS.—The Secretary shall not im-
24 plement a policy change or clarification for
25 DMEPOS audit requirements earlier than 6 months

1 after the date of publication of such change or clari-
2 fication in the Federal Register.

3 “(9) FUNDING.—After application of paragraph
4 (1)(C) of section 1893(h), the Secretary shall retain
5 a portion of the amounts recovered by Medicare
6 DMEPOS contractors under this title with respect
7 to DMEPOS which shall be available to the Centers
8 for Medicare & Medicaid Services Program Manage-
9 ment Account for purposes of carrying out this sub-
10 section and to implement corrective actions to help
11 reduce the error rate of payments for DMEPOS
12 under part B. The amount retained under the pre-
13 ceding sentence shall not exceed an amount equal to
14 25 percent of the amounts recovered under section
15 1893(h) with respect to DMEPOS.

16 “(10) DURABLE MEDICAL EQUIPMENT, PROS-
17 THETICS, ORTHOTICS, AND SUPPLIES AND DMEPOS
18 DEFINED.—In this subsection, the terms ‘durable
19 medical equipment, prosthetics, orthotics, and sup-
20 plies’ and ‘DMEPOS’ mean—

21 “(A) durable medical equipment (as de-
22 fined in section 1861(n)) and supplies used
23 with such equipment, other than implantable
24 items for which payment may be made under
25 section 1833(t);

1 “(B) prosthetic devices (as described in
 2 section 1861(s)(8)), including items described
 3 in section 1842(s)(2)(D);

4 “(C) orthotics and prosthetics (as de-
 5 scribed in section 1861(s)(9));

6 “(D) surgical dressings (as described in
 7 section 1861(s)(5));

8 “(E) home dialysis supplies and equipment
 9 (as described in section 1861(s)(2)(F)); and

10 “(F) therapeutic shoes for diabetics (as de-
 11 scribed in section 1861(s)(12)).”.

12 (2) FUNDING CONFORMING AMENDMENT.—Sec-
 13 tion 1893(h)(2) of the Social Security Act (42
 14 U.S.C. 1395ddd(h)(2)) is amended by inserting “or
 15 section 1874A(h)(9)” after “paragraph (1)(C)”.

16 (3) TRANSPARENCY.—Section 1893(h)(8) of the
 17 Social Security Act (42 U.S.C. 1395ddd(h)(8)) is
 18 amended—

19 (A) in the first sentence, by inserting be-
 20 fore the period at the end the following: “, on
 21 the use of medicare administrative contractors
 22 in conducting audits with respect to durable
 23 medical equipment, prosthetics, orthotics, and
 24 supplies under section 1874A, and on the over-
 25 turn rates for each level of appeal”;

1 (B) by striking “REPORT.—The Sec-
2 retary” and inserting “REPORT.—

3 “(A) IN GENERAL.—The Secretary”; and

4 (C) by adding at the end the following new
5 subparagraph:

6 “(B) INCLUSION OF CERTAIN INFORMA-
7 TION.—

8 “(i) IN GENERAL.—For reports sub-
9 mitted under this paragraph for 2015 or a
10 subsequent year, each such report shall in-
11 clude, with respect to each recovery audit
12 contractor (and each medicare administra-
13 tive contractor) that is responsible for au-
14 dits relating to payment for durable med-
15 ical equipment, prosthetics, orthotics, and
16 supplies, information on the result of all
17 appeals relating to audits for durable med-
18 ical equipment, prosthetics, orthotics, and
19 supplies for each individual level of appeals
20 with respect to each of the categories of
21 audits described in clause (ii) carried out
22 by recovery audit contractors under this
23 subsection or by medicare administrative
24 contractors under section 1874A. For pur-
25 poses of such reports and public reporting

1 regarding such reports, such information
 2 relating to audits for orthotics and pros-
 3 thetics shall be grouped separately from
 4 the information relating to audits for dura-
 5 ble medical equipment and supplies.

6 “(ii) CATEGORIES OF AUDITS.—For
 7 purposes of clause (i), each of the following
 8 is a separate category of audit:

9 “(I) Automated.

10 “(II) Complex.

11 “(III) Medical necessity review.

12 “(IV) Part B.”.

13 (b) ADJUSTMENT OF RECORD REQUEST MAXIMUM
 14 BASED ON ERROR RATES.—Section 1893 of the Social
 15 Security Act (42 U.S.C. 1395ddd) is amended by adding
 16 at the end the following new subsection:

17 “(j) ADJUSTMENT OF MAXIMUM RECORD REQUEST
 18 THRESHOLD FOR AUDITS FOR PAYMENT FOR DURABLE
 19 MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND
 20 SUPPLIES (DMEPOS) BASED ON SUPPLIER ERROR
 21 RATES.—

22 “(1) IDENTIFICATION OF ERROR RATES.—The
 23 Secretary shall determine the audited claims error
 24 rates for payment for durable medical equipment,
 25 prosthetics, orthotics, and supplies and identify—

1 “(A) those DMEPOS suppliers with a rel-
2 atively high error rate with respect to claims for
3 DMEPOS; and

4 “(B) those DMEPOS suppliers with a rel-
5 atively low error rate with respect to such
6 claims or with a steadily decreasing error rate
7 for such claims.

8 “(2) FACTORS IN IDENTIFICATION.—

9 “(A) ANALYSIS.—For purposes of identi-
10 fying the groups of DMEPOS suppliers under
11 paragraph (1), the Secretary shall analyze the
12 following as they relate to the total number and
13 amount of claims submitted by product cat-
14 egory and by each DMEPOS supplier:

15 “(i) The improper payment rates of
16 the supplier.

17 “(ii) The amount of improper pay-
18 ments made to the supplier.

19 “(iii) The frequency of errors made by
20 the supplier over time.

21 “(iv) Other information determined
22 appropriate by the Secretary.

23 In performing such analysis, the Secretary shall
24 exclude claims for payment that have been de-

1 nied and are being appealed by a DMEPOS
2 supplier under section 1869.

3 “(B) ASSIGNMENT BASED ON COMPOSITE
4 SCORE.—Using a statistically valid sample, the
5 Secretary shall assign DMEPOS suppliers
6 under paragraph (1) based on a composite score
7 determined using the analysis under subpara-
8 graph (A) as follows:

9 “(i) Suppliers with high, expensive,
10 and frequent errors shall receive a high
11 score and be identified as high error sup-
12 pliers under paragraph (1)(A).

13 “(ii) Suppliers with few, inexpensive,
14 and infrequent errors shall receive a low
15 score and be identified as low error sup-
16 pliers under paragraph (1)(B).

17 “(iii) Only a small proportion of the
18 total suppliers in any area shall be as-
19 signed to either group identified under ei-
20 ther such paragraph.

21 “(C) TIMEFRAME OF IDENTIFICATION.—

22 “(i) IN GENERAL.—Any identification
23 of a DMEPOS supplier under paragraph
24 (1) shall be for a period of 12 months.

1 “(ii) REEVALUATION.—The Secretary
2 shall reevaluate each such identification at
3 the end of such period.

4 “(iii) USE OF MOST CURRENT INFOR-
5 MATION.—In carrying out the reevaluation
6 under clause (ii) with respect to a supplier,
7 the Secretary shall—

8 “(I) consider the most current in-
9 formation available with respect to the
10 supplier under the analysis under sub-
11 paragraph (A); and

12 “(II) take into account improve-
13 ment or regression of the supplier.

14 “(3) ADJUSTMENT OF MAXIMUM RECORD RE-
15 QUESTS BASED ON ERROR RATE PERFORMANCE.—
16 The Secretary shall establish procedures under
17 which, for those DMEPOS suppliers that are identi-
18 fied—

19 “(A) under paragraph (1)(A) (relating to a
20 relatively high error rate), the Secretary shall
21 increase the maximum record request made by
22 Medicare DMEPOS contractors in auditing
23 claims of such suppliers for DMEPOS; and

24 “(B) under paragraph (1)(B) (relating to a
25 relatively low or decreasing error rate), the Sec-

1 retary shall decrease the maximum record re-
2 quest made by Medicare DMEPOS contractors
3 of such suppliers.

4 “(4) BEST PERFORMING SUPPLIERS HAVE RE-
5 DUCED RANDOM AUDITS.—In the case of a
6 DMEPOS supplier that the Secretary identifies
7 under paragraph (1)(B) for a year as having an au-
8 dited claims error rate that is less than 15 percent
9 for a category of DMEPOS, the Secretary shall not
10 conduct more than 1 random audit of a claim per
11 product category for the year for such category.

12 “(5) RESTORATION OF CLINICAL INFERENCE
13 AND JUDGMENT.—With respect to the conduct of
14 payment audits of DMEPOS suppliers respecting
15 DMEPOS under part B, the Secretary shall use
16 clinical inference and clinical judgment in the eval-
17 uation of medical records and orders when con-
18 ducting such audits in the same manner as the Sec-
19 retary interpreted and applied such clinical judg-
20 ment to claim reviews before 2009 pursuant to the
21 Secretary’s instruction to contractors.

22 “(6) TREATMENT OF CERTAIN DOCUMENTA-
23 TION CREATED BY ORTHOTISTS AND
24 PROSTHETISTS.—For purposes of determining under
25 this title the reasonableness and medical necessity of

1 prosthetic devices and orthotics and prosthetics, doc-
 2 umentation created by orthotists and prosthetists re-
 3 lating to the need for such devices, orthotics, and
 4 prosthetics shall be considered part of the medical
 5 record.

6 “(7) DEFINITIONS.—In this subsection:

7 “(A) DURABLE MEDICAL EQUIPMENT,
 8 PROSTHETICS, ORTHOTICS, AND SUPPLIES AND
 9 DMEPOS.—The terms ‘durable medical equip-
 10 ment, prosthetics, orthotics, and supplies’ and
 11 ‘DMEPOS’ have the meaning given such terms
 12 in section 1874A(h)(10).

13 “(B) DMEPOS SUPPLIER.—The term
 14 ‘DMEPOS supplier’ means an entity that fur-
 15 nishes DMEPOS to individuals for which pay-
 16 ment may be made under part B.

17 “(C) MEDICARE DMEPOS CONTRACTOR.—
 18 The term ‘Medicare DMEPOS contractor’
 19 means a recovery audit contractor and any
 20 other contractor (including a medicare adminis-
 21 trative contractor) that performs pre-pay or
 22 post-pay audits with respect to claims for pay-
 23 ment for DMEPOS under part B.”.

24 (c) APPLICATION OF TIMELY FILING LIMITS TO RE-
 25 OCCURRING DMEPOS CLAIMS SUBJECT TO PAYMENT

1 AUDITS.—Section 1842(b)(3)(B) of the Social Security
 2 Act (42 U.S.C. 1395u(b)(3)(B)) is amended by inserting
 3 before the semicolon at the end the following: “, except
 4 that the reopening of a claim by a Medicare DMEPOS
 5 contractor (as defined in section 1893(j)(7)) in a post-pay-
 6 ment audit or a claim denial in a prepayment audit for
 7 DMEPOS (as defined in such section) shall toll the timely
 8 claim filing limits under this part such that the Secretary
 9 may not prohibit a DMEPOS supplier (as defined in such
 10 section) from taking an appeal from the determination of
 11 a claim in a pre- or post-payment audit, or the submission
 12 or resubmission for payment of any claims that follow se-
 13 quentially from the audited claim on the basis that the
 14 timely claim filing limits have expired”.

15 (d) MAXIMUM AUDIT DOCUMENTATION REVIEW PE-
 16 RIOD OF 3 YEARS FOR MEDICARE CONTRACTORS.—

17 (1) RACs.—Section 1893(h)(4)(B) of the So-
 18 cial Security Act (42 U.S.C. 1395ddd(h)(4)(B)) is
 19 amended by striking “4 fiscal years” and inserting
 20 “3 fiscal years”.

21 (2) IN OVERPAYMENT OF CLAIMS.—The last
 22 sentences of subsections (b) and (c) of section 1870
 23 of the Social Security Act (42 U.S.C. 1395gg) are
 24 each amended by striking “fifth year” and “five-

1 year” and inserting “third year” and “three-year”,
2 respectively.

3 (3) LIMITATION ON AUDIT DOCUMENTATION
4 REVIEW PERIOD.—Section 1874A(a) of the Social
5 Security Act (42 U.S.C. 1395kk–1(a)) is amended
6 by adding at the end the following new paragraph:
7 “(7) LIMITATION ON AUDIT DOCUMENTATION
8 REVIEW PERIOD.—The Secretary shall limit the
9 audit documentation review period for medicare ad-
10 ministrative contractors to 3 years.”.

11 (4) EFFECTIVE DATE.—The amendments made
12 by this subsection shall apply with respect to pay-
13 ments made for items and services furnished on or
14 after the date of the enactment of this Act.

○