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114TH CONGRESS
1ST SESSION

H. R. 1530

To amend title XVIII of the Social Security Act to refine how Medicare pays for orthotics and prosthetics, to improve beneficiary experience and outcomes with orthotic and prosthetic care, and to streamline the Medicare administrative appeals process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2015

Mr. THOMPSON of Pennsylvania (for himself and Mr. THOMPSON of California) 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 refine how Medicare pays for orthotics and prosthetics, to improve beneficiary experience and outcomes with orthotic and prosthetic care, and to streamline the Medicare administrative appeals process, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Orthotics and Prosthetics Improvement Act of 2015''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. ELIGIBILITY FOR MEDICARE PAYMENT FOR HEALTH PROFESSIONALS BASED ON QUALIFICATIONS.

(a) IN GENERAL.—Title XVIII of the Social Security Act is amended by inserting after section 1863 (42 U.S.C. 1395z) the following new section:

''ELIGIBILITY FOR MEDICARE PAYMENT FOR SUPPLIERS BASED ON QUALIFICATIONS

''SEC. 1863A. No payment may be made under this part for an item or service that is furnished (i) in a State

that requires a provider or supplier to be licensed in order to furnish such item or service, unless the provider or supplier furnishing such item or service possesses all applicable licensure from the State, or (ii) in a State that does not require a provider or supplier to be licensed in order to furnish such item or service, unless the provider or supplier meets all applicable qualifications, as established by the Secretary. Applicable qualifications means all applicable accreditations, certifications, and credentials required under this part for providers and suppliers, including the requirements established under section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554, with these requirements to be applicable immediately in accordance with that statutory language even in advance of the Secretary issuing applicable regulations under this provision, as well as any and all applicable regulations as established by the Secretary, this being noted inasmuch as issuance of these regulations are approximately fourteen years beyond the statutory requirement for their being issued in final form by the Secretary, which it is anticipated the Secretary will remedy expeditiously.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SEC. 3. MODIFICATION OF REQUIREMENTS APPLICABLE UNDER MEDICARE TO THE DESIGNATION OF ACCREDITATION ORGANIZATIONS FOR SUPPLIERS OF ORTHOTICS AND PROSTHETICS.

(a) IN GENERAL.—Section 1834(a)(20)(B) of the Social Security Act (42 U.S.C. 1395m(a)(20)(B)) is amended—

(1) by striking ''ORGANIZATIONS.—Not later than'' and inserting: ''ORGANIZATIONS.—

''(i) IN GENERAL.—Subject to clause (ii), not later than''; and

(2) by adding after clause (i), as added by paragraph (1), the following new clauses:

''(ii) SPECIAL REQUIREMENTS FOR ACCREDITATION OF SUPPLIERS OF ORTHOTICS AND PROSTHETICS.—For purposes of applying quality standards under subparagraph (A) for suppliers (other than suppliers described in clause (iii)) of items and services described in subparagraph (D)(ii), the Secretary shall designate and approve independent accreditation organizations under clause (i) only if such organizations are Boards or programs described in subsection (h)(1)(F)(iv). Not later than January 1, 2016, the Secretary

shall ensure that at least one, and ideally multiple, independent accreditation organizations are designated and approved in accordance with this clause.

''(iii) EXCEPTION.—Suppliers described in this clause are physicians, occupational therapists, or physical therapists who are licensed or otherwise regulated by the State in which they are practicing and who receive payment under this title, including regulations promulgated pursuant to this subsection.''.

(b) EFFECTIVE DATE.—The designated and approved organizations must satisfy the requirement of section 1834(a)(20)(B)(ii), as added by subsection (a)(2), not later than January 1, 2016, regardless of whether such organizations are designated or approved as an independent accreditation organization before, on, or after the date of the enactment of this Act.

SEC. 4. APPLICATION OF EXISTING ACCREDITATION AND LICENSURE REQUIREMENTS TO CERTAIN PROSTHETICS AND CUSTOM-FABRICATED OR CUSTOM-FITTED ORTHOTICS.

(a) IN GENERAL.—Section 1834(h)(1)(F) of the Social Security Act (42 U.S.C. 1395m(h)(1)(F)) is amended—

(1) in the heading, by inserting ''OR CUSTOM-FITTED'' after ''CUSTOM-FABRICATED'';

(2) in clause (i), by striking ''an item of custom-fabricated orthotics described in clause (ii) or for an item of prosthetics unless such item is'' and inserting ''an item of orthotics or prosthetics, including an item of custom-fabricated orthotics described in clause (ii), unless such item is'';

(3) in clause (ii)(II), by striking ''a list of items to which this subparagraph applies'' and inserting ''a list of items for purposes of clause (i)'';

(4) in clause (iii)(III), by striking ''to provide or manage the provision of prosthetics and custom-designed or -fabricated orthotics'' and inserting ''to provide or manage the provision of orthotics and prosthetics (and custom-designed or -fabricated orthotics, in the case of an item described in clause (ii))''; and

(5) by adding at the end the following new clause:

"(v) EXEMPTION OF OFF-THE-SHELF ORTHOTICS INCLUDED IN A COMPETITIVE ACQUISITION PROGRAM.—This subparagraph shall not apply to an item of orthotics described in paragraph (2)(C) of section 1847(a) furnished on or after January 1, 2016, that is included in a competitive acquisition area under such section.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to orthotics and prosthetics furnished on or after January 1, 2016.

SEC. 5. ELIGIBILITY FOR MEDICARE PAYMENT FOR ORTHOTICS AND PROSTHETICS BASED ON SUPPLIER QUALIFICATIONS AND COMPLEXITY OF CARE.

Section 1834(h) of the Social Security Act (42 U.S.C. 1395m(h)) is amended—

(1) in paragraph (1)(F)(iii), in the matter preceding subclause (I), by striking "other individual who" and inserting "other individual who, with respect to the provision of orthotics and prosthetics furnished on or after January 1, 2016, and subject

to paragraph (5)(A), satisfies all applicable criteria of the provider qualification designation for such category described in the respective clause, and who'';

(2) in paragraph (1)(F)(iv), by inserting before the period the following: ''and, with respect to the provision of orthotics and prosthetics furnished on or after January 1, 2016, and subject to paragraph (5)(A), satisfies all applicable criteria of the provider qualification designation for such orthotic or prosthetic''; and

(3) by adding at the end the following new paragraph:

''(5) ELIGIBILITY FOR PAYMENT BASED ON SUPPLIER QUALIFICATIONS AND COMPLEXITY OF CARE.—

''(A) CONSIDERATIONS FOR ELIGIBILITY FOR PAYMENTS.—

''(i) IN GENERAL.—In applying clauses (iii) and (iv) of paragraph (1)(F) for purposes of determining whether payment may be made under this subsection for orthotics and prosthetics furnished on or after January 1, 2016, the Secretary shall take into account the complexity of

the respective item and, subject to clauses (ii), (iii), and (iv), the qualifications of the individual or entity furnishing and fabricating such respective item in accordance with this paragraph.

''(ii) INDIVIDUALS AND ENTITIES EXEMPTED FROM SUPPLIER QUALIFICATION CRITERIA.—With respect to the provision of orthotics or prosthetics, any criteria for supplier qualifications shall not apply to physicians, occupational therapists, or physical therapists who are licensed or otherwise regulated by the State in which they are practicing and who receive payment under this title, including regulations promulgated pursuant to this subsection, for the provision of orthotics and prosthetics.

''(iii) SUPPLIERS MEDICARE-ELIGIBLE PRIOR TO JANUARY 1, 2016 EXEMPTED.—In the case of a qualified supplier who is eligible to receive payment under this title before January 1, 2016, with respect to the provision of orthotics and prosthetics, any new criteria for provider qualifications established after such date shall not apply

to such supplier, for the furnishing or fabrication of such an item.

''(iv) MODIFICATIONS.—The Secretary shall, in consultation with the Boards and programs described in paragraph (1)(F)(iv), periodically review the criteria for supplier qualifications and may implement by regulation any modifications to such criteria, as determined appropriate in accordance with such consultation. Any such modifications shall take effect no earlier than January 1, 2016.

''(B) ASSIGNMENT OF BILLING CODES.—For purposes of subparagraph (A), the Secretary, in consultation with representatives of the fields of occupational therapy, physical therapy, orthotics, and prosthetics, shall utilize and incorporate the set of L-codes listed, as of the date of enactment of this paragraph, in the Centers for Medicare & Medicaid Services document entitled Transmittal 656 (CMS Pub. 100–04, Change Request 3959, August 19, 2005). Transmittal 656 shall be the controlling source of category, product, and code assignments for the orthotics and prosthetics care, using the

supplier qualification designation for each HCPCS code as stated in such document. In the case that Transmittal 656 is updated, reissued, or replaced by a subsequent document, the previous sentence shall be applied with respect to the most recent update, reissuance, or replacement of such document.''.

SEC. 6. ORTHOTIST'S AND PROSTHETIST'S CLINICAL NOTES AS PART OF THE PATIENT'S MEDICAL RECORD.

Section 1834(h) of the Social Security Act (42 U.S.C. 1395m(h)), as amended by section 5, is amended by adding at the end the following new paragraph:

''(6) DOCUMENTATION CREATED BY ORTHOTISTS AND PROSTHETISTS.—With respect to claims filed after August 11, 2011, for purposes of determining the reasonableness, medical necessity, and functional level (applicable to prosthetics) of prosthetic devices and orthotics and prosthetics, documentation created by an orthotist or prosthetist shall be considered part of the patient's medical record and, consistent with the treatment of orthotic and prosthetic patient care delivery stated in the health care professional exception provided in clause (ii) of subsection (a)(20)(F), shall be given the same

consideration as documentation created by other health professionals, including physicians, nurse practitioners, occupational therapists, and physical therapists. For claims filed before date of enactment of this Act, this paragraph shall not apply to those appeals of claim denials that have been waived, denied at the last level of appeal, or otherwise settled.''.

SEC. 7. DISTINGUISHING ORTHOTISTS AND PROSTHETISTS FROM SUPPLIERS OF DURABLE MEDICAL EQUIPMENT AND SUPPLIES.

(a) REQUIREMENTS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—Section 1834(j)(5) of the Social Security Act (42 U.S.C. 1395m(j)(5)) is amended by striking subparagraph (C).

(b) REQUIREMENTS FOR ORTHOTISTS AND PROSTHETISTS.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

''(r) REQUIREMENTS FOR ORTHOTISTS AND PROSTHETISTS.—

''(1) ISSUANCE AND RENEWAL OF SUPPLIER NUMBER.—

''(A) PAYMENT.—

"(i) IN GENERAL.—No payment may be made under this part to an orthotic or prosthetic supplier unless such orthotic or prosthetic supplier obtains (and renews at such intervals as the Secretary may require) a supplier number; provided, however, that providers otherwise permitted to receive payment for orthotics and prosthetics under Part A may continue to receive such payment without interruption.

"(B) STANDARDS FOR POSSESSING A SUPPLIER NUMBER.—An orthotic and/or prosthetic supplier may not obtain a supplier number unless the supplier meets standards prescribed by the Secretary that include requirements that the orthotic/prosthetic supplier (and, where applicable, the orthotist or prosthetist)—

"(i) comply with all applicable State and Federal licensure and regulatory requirements;

"(ii) acquire accreditation from the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC) or the Board of Certification/Accreditation, International (BOC), or other

accreditation entity deemed by the HHS Secretary to have standards that are essentially equivalent to such boards;

"(iii) maintain a physical facility on an appropriate site;

"(iv) have proof of appropriate liability insurance; and

"(v) meet such other requirements as the Secretary shall specify.

"(C) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS.—The Secretary may not issue more than one supplier number to any orthotic and/or prosthetic supplier unless the Secretary finds that the issuance of more than one number is appropriate to identify other entities under the orthotic or prosthetic supplier's ownership or control.

"(2) ORDER FOR ORTHOTICS OR PROSTHETICS.—

"(A) INFORMATION PROVIDED BY ORTHOTISTS AND PROSTHETISTS ON DETAILED ORDERS FOR ORTHOTICS AND PROSTHETICS.—An orthotist or prosthetist may distribute to physicians, or to an individual entitled to benefits under this part, a detailed written order for

orthotics or prosthetics (as defined in paragraph (4)) for commercial purposes that contains the following information:

"(i) An identification of the orthotic or prosthetic supplier and the beneficiary to whom such orthotics or prosthetics are furnished.

"(ii) An identification of the treating physician, including the name, Medicare provider number, address, and telephone number.

"(iii) Signature of the physician identified in (ii).

"(iv) A description of such orthotics or prosthetics.

"(v) Any billing code identifying such orthotics or prosthetics.

"(vi) Diagnosis codes, a description of the beneficiary's medical and functional condition, and information about the need for the orthotics or prosthetics.

"(vii) Any other administrative information identified by the Secretary.

"(B) INFORMATION ON CODING AND DESCRIPTORS OF COMPONENTS PROVIDED.—If

an orthotist or prosthetist distributes a detailed written order for orthotics or prosthetics, the orthotist or prosthetist also shall list on the order the HCPCS codes and summary descriptors of the items and services being recommended prior to distribution of such order to the treating physician.

''(C) WRITTEN PHYSICIAN ORDER.—A detailed written order for orthotics or prosthetics must be signed by the treating physician identified in (a)(ii) of this subsection, and be included in the orthotist or prosthetist's order.

''(3) LIMITATION ON PATIENT LIABILITY.—If an orthotist or prosthetist—

''(A) furnishes an orthotic or prosthetic to a beneficiary for which no payment may be made under this part; or

''(B) subject to section 1879, furnishes an orthosis or prosthesis to a beneficiary for which payment is denied under section 1862(a)(1) of this title,

any expenses incurred for such orthotics or prosthetics furnished to an individual by the orthotist or prosthetist not on an assigned basis shall be the responsibility of such orthotist or prosthetist. The in-

dividual shall have no financial responsibility for such expenses and the orthotist or prosthetist shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items and services. The provisions of subsection (a)(18) of this section shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such subsection.

''(4) PATIENT LIABILITY.—If an orthotist or prosthetist furnishes an orthotic or prosthetic to a beneficiary for which payment is denied in advance under subsection (a)(15) of this section, expenses incurred for such orthotic or prosthetic furnished to the beneficiary by the orthotist or prosthetist shall be the responsibility of the beneficiary.

''(5) DEFINITIONS.—For purposes of this paragraph—

''(A) 'Orthotist or prosthetist' shall mean an individual who is specifically trained and educated in the provision of, and patient care management related to, prosthetics and custom-fabricated or custom-fit orthotics, and—

''(i) in the case of a State that provides for the licensing of orthotists and

prosthetists, is licensed by the State in which the orthotics or prosthetics were supplied; or

''(ii) in the case of a State that does not provide for the licensing of orthotists and prosthetists, is certified by the American Board of Certification in Orthotics, Prosthetics and Pedorthics, Inc. or by the Board of Certification/Accreditation, International, or certified and approved by a program that the Secretary determines has certification and approval standards that are essentially equivalent to those of such Boards listed in this subsection.

''(B) 'Orthotics and prosthetics' shall have the meaning given such term in 1834(h)(4)(C).

''(C) 'Detailed Written Order for orthotics or prosthetics' shall mean a form or other document prepared by an orthotist or prosthetist and signed by the physician (as defined by section 1861(r) of the Social Security Act) that contains information required by the Secretary to be submitted to show that an orthotic or prosthetic is reasonable and necessary for the

treatment of an illness or injury or to improve the functioning of a malformed body member.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and apply to items and services furnished on or after such date.

SEC. 8. GREATER ACCOUNTABILITY AND TRANSPARENCY OF RECOVERY AUDIT CONTRACTORS.

(a) IN GENERAL.—Section 1893(h) of the Social Security Act (42 U.S.C. 1395ddd(h)) is amended by adding at the end the following:

''(9) PUBLIC REPORTING OF RECOVERY AUDIT CONTRACTOR PERFORMANCE.—

''(A) IN GENERAL.—With respect to each recovery audit contractor with a contract under this section for a contract year the Secretary shall publish on the Internet website of the Centers for Medicare & Medicaid Services the following information with respect to the performance of each such recovery audit contractor:

''(i) Audit rates.

''(ii) Appeals outcomes rates at each stage of the appeals process under section 1869.

''(B) SEPARATE CATEGORIES OF PROVIDERS OF SERVICES AND SUPPLIERS FOR INFORMATION REPORTED.—When compiling and publicly reporting the information described in subparagraph (A), the Secretary shall create separate categories of providers and suppliers, including a separate category for orthotics and prosthetics instead of aggregating orthotics and prosthetics with durable medical equipment and supplies.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply not later than contract years beginning on or after the date of enactment of this Act.

SEC. 9. MAINTAINING DUE PROCESS AND SATISFYING THE NINETY-DAY STATUTORY PERIOD FOR ADMINISTRATIVE LAW JUDGE DECISIONS.

(a) TIMELY DECISIONS.—Subject to subsection (b), the Secretary shall not recoup more than 50 percent of any overpayments for qualified providers and hospitals in response to an audit carried out by a recovery audit contractor under this section until an administrative law judge has rendered a decision, until such time as the Secretary certifies that, in the majority of requests for hearing filed by providers and suppliers under section 1869(d) of the Social Security Act (42 U.S.C. 1395ff(d)), an ad-

ministrative law judge has rendered a decision within the 90-day period beginning on the date a request for hearing has been timely filed.

(1) For purposes of this subsection, a qualifying provider is one that—

(A) meets the requirements as a Medicare provider or supplier;

(B) has maintained a Medicare provider number for a minimum of six years;

(C) is in good standing with applicable Federal and State laws and regulations;

(D) has a good record of proper payments under Medicare, as determined by the Secretary; and

(E) the beneficiary was treated in person.

(2) This subsection shall be voluntary for providers and shall not prohibit providers from choosing a different course of action.

(b) EXCEPTION FOR AUDITS RELATED TO FRAUDULENT ACTIVITY.—Notwithstanding subsection (a), the Secretary may recoup overpayments related to or resulting from fraudulent activity on the part of a Medicare provider or supplier.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SEC. 10. CLARIFICATION ABOUT MINIMAL SELF-ADJUSTMENT FOR OFF-THE-SHELF ORTHOTICS.

(a) IN GENERAL.—Section 1847(a)(2)(C) of the Social Security Act (42 U.S.C. 1395w–3(a)(2)(C)) is amended—

(1) by inserting ''furnished to a patient'' after ''section 1861(s)(9) of this title'';

(2) by inserting ''by that patient (and not by any other person)'' after ''minimal self-adjustment''; and

(3) by striking ''to fit to the individual'' and inserting ''to fit to that patient''.

(b) INCLUSION IN MEDICAL AND OTHER HEALTH SERVICES.—Section 1861(s)(9) of the Social Security Act (42 U.S.C. 1395) is amended—

(1) by striking ''leg, arm'' and inserting ''(A) leg, arm'';

(2) in subparagraph (A), as added by paragraph (1), by striking the semicolon and inserting ''; and''; and

(3) by adding the following new subparagraph:

''(B) off-the-shelf orthotics (as defined in section 1847(a)(2)(C)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 2007, and apply to items and services furnished on or after such date.

SEC. 11. REGULATIONS.

No later than 120 days after enactment of this Act, the Secretary shall promulgate regulations to implement—

(1) the provisions of, and amendments made by, this Act; and

(2) the provisions of, and amendments made by, section 427 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protections Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554.

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