

114TH CONGRESS
1ST SESSION

S. 257

To amend title XVIII of the Social Security Act with respect to physician supervision of therapeutic hospital outpatient services.

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 2015

Mr. MORAN (for himself, Mr. TESTER, and Mr. THUNE) 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 with respect to physician supervision of therapeutic hospital outpatient services.

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 “Protecting Access to
5 Rural Therapy Services (PARTS) Act”.

6 **SEC. 2. REQUIREMENTS FOR PHYSICIAN SUPERVISION OF**
7 **THERAPEUTIC HOSPITAL OUTPATIENT SERV-**
8 **ICES.**

9 (a) THERAPEUTIC HOSPITAL OUTPATIENT SERV-
10 ICES.—

1 (1) SUPERVISION REQUIREMENTS.—Section
 2 1833 of the Social Security Act (42 U.S.C. 1395l)
 3 is amended by adding at the end the following new
 4 subsection:

5 “(z) PHYSICIAN SUPERVISION REQUIREMENTS FOR
 6 THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—

7 “(1) GENERAL SUPERVISION FOR THERAPEUTIC
 8 SERVICES.—Except as may be provided under para-
 9 graph (2), insofar as the Secretary requires the su-
 10 pervision by a physician or a non-physician practi-
 11 tioner for payment for therapeutic hospital out-
 12 patient services (as defined in paragraph (5)(A))
 13 furnished under this part, such requirement shall be
 14 met if such services are furnished under the general
 15 supervision (as defined in paragraph (5)(B)) of the
 16 physician or non-physician practitioner, as the case
 17 may be.

18 “(2) EXCEPTIONS PROCESS FOR HIGH-RISK OR
 19 COMPLEX MEDICAL SERVICES REQUIRING A DIRECT
 20 LEVEL OF SUPERVISION.—

21 “(A) IN GENERAL.—Subject to the suc-
 22 ceeding provisions of this paragraph, the Sec-
 23 retary shall establish a process for the designa-
 24 tion of therapeutic hospital outpatient services

1 furnished under this part that, by reason of
2 complexity or high risk, require—

3 “(i) direct supervision (as defined in
4 paragraph (5)(C)) for the entire service; or

5 “(ii) direct supervision during the ini-
6 tiation of the service followed by general
7 supervision for the remainder of the serv-
8 ice.

9 “(B) CONSULTATION WITH CLINICAL EX-
10 PERTS.—

11 “(i) IN GENERAL.—Under the process
12 established under subparagraph (A), before
13 the designation of any therapeutic hospital
14 outpatient service for which direct super-
15 vision may be required under this part, the
16 Secretary shall consult with a panel of out-
17 side experts described in clause (ii) to ad-
18 vise the Secretary with respect to each
19 such designation.

20 “(ii) ADVISORY PANEL ON SUPER-
21 VISION OF THERAPEUTIC HOSPITAL OUT-
22 PATIENT SERVICES.—For purposes of
23 clause (i), a panel of outside experts de-
24 scribed in this clause is a panel appointed
25 by the Secretary, based on nominations

submitted by hospital, rural health, and medical organizations representing physicians, non-physician practitioners, and hospital administrators, as the case may be, that meets the following requirements:

“(I) COMPOSITION.—The panel shall be composed of at least 15 physicians and non-physician practitioners who furnish therapeutic hospital outpatient services for which payment is made under this part and who collectively represent the medical specialties that furnish such services, and of 4 hospital administrators of hospitals located in rural areas (as defined in section 1886(d)(2)(D)) or critical access hospitals.

“(II) PRACTICAL EXPERIENCE REQUIRED FOR PHYSICIANS AND NON-PHYSICIAN PRACTITIONERS.—During the 12-month period preceding appointment to the panel by the Secretary, each physician or non-physician practitioner described in subclause (I) shall have furnished thera-

1 peutic hospital outpatient services for
2 which payment was made under this
3 part.

4 “(III) MINIMUM RURAL REP-
5 RESENTATION REQUIREMENT FOR
6 PHYSICIANS AND NON-PHYSICIAN
7 PRACTITIONERS.—Not less than 50
8 percent of the membership of the
9 panel that is comprised of physicians
10 and non-physician practitioners shall
11 be physicians or non-physician practi-
12 tioners described in subclause (I) who
13 practice in rural areas (as defined in
14 section 1886(d)(2)(D)) or who furnish
15 such services in critical access hos-
16 pitals.

17 “(iii) APPLICATION OF FACA.—The
18 Federal Advisory Committee Act (5 U.S.C.
19 2 App.), other than section 14 of such Act,
20 shall apply to the panel of outside experts
21 appointed by the Secretary under clause
22 (ii).

23 “(C) SPECIAL RULE FOR OUTPATIENT
24 CRITICAL ACCESS HOSPITAL SERVICES.—Inso-
25 far as a therapeutic outpatient hospital service

1 that is an outpatient critical access hospital
2 service is designated as requiring direct super-
3 vision under the process established under sub-
4 paragraph (A), the Secretary shall deem the
5 critical access hospital furnishing that service
6 as having met the requirement for direct super-
7 vision for that service if, when furnishing such
8 service, the critical access hospital meets the
9 standard for personnel required as a condition
10 of participation under section 485.618(d) of
11 title 42, Code of Federal Regulations (as in ef-
12 fect on the date of the enactment of this sub-
13 section).

14 “(D) CONSIDERATION OF COMPLIANCE
15 BURDENS.—Under the process established
16 under subparagraph (A), the Secretary shall
17 take into account the impact on hospitals and
18 critical access hospitals in complying with re-
19 quirements for direct supervision in the fur-
20 nishing of therapeutic hospital outpatient serv-
21 ices, including hospital resources, availability of
22 hospital-privileged physicians, specialty physi-
23 cians, and non-physician practitioners, and ad-
24 ministrative burdens.

1 “(E) REQUIREMENT FOR NOTICE AND
2 COMMENT RULEMAKING.—Under the process
3 established under subparagraph (A), the Sec-
4 retary shall only designate therapeutic hospital
5 outpatient services requiring direct supervision
6 under this part through proposed and final
7 rulemaking that provides for public notice and
8 opportunity for comment.

9 “(F) RULE OF CONSTRUCTION.—Nothing
10 in this subsection shall be construed as author-
11 izing the Secretary to apply or require any level
12 of supervision other than general or direct su-
13 pervision with respect to the furnishing of
14 therapeutic hospital outpatient services.

15 “(3) INITIAL LIST OF DESIGNATED SERVICES.—
16 The Secretary shall include in the proposed and final
17 regulation for payment for hospital outpatient serv-
18 ices for 2017 under this part a list of initial thera-
19 peutic hospital outpatient services, if any, designated
20 under the process established under paragraph
21 (2)(A) as requiring direct supervision under this
22 part.

23 “(4) DIRECT SUPERVISION BY NON-PHYSICIAN
24 PRACTITIONERS FOR CERTAIN HOSPITAL OUT-
25 PATIENT SERVICES PERMITTED.—

“(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, a non-physician practitioner may directly supervise the furnishing of—

“(i) therapeutic hospital outpatient services under this part, including cardiac rehabilitation services (under section 1861(eee)(1)), intensive cardiac rehabilitation services (under section 1861(eee)(4)), and pulmonary rehabilitation services (under section 1861(fff)(1)); and

“(ii) those hospital outpatient diagnostic services (described in section 1861(s)(2)(C)) that require direct supervision under the fee schedule established under section 1848.

“(B) REQUIREMENTS.—Subparagraph (A) shall apply insofar as the non-physician practitioner involved meets the following requirements:

“(i) SCOPE OF PRACTICE.—The non-physician practitioner is acting within the scope of practice under State law applicable to the practitioner.

1 “(ii) ADDITIONAL REQUIREMENTS.—

2 The non-physician practitioner meets such
3 requirements as the Secretary may specify.

4 “(5) DEFINITIONS.—In this subsection:

5 “(A) THERAPEUTIC HOSPITAL OUT-
6 PATIENT SERVICES.—The term ‘therapeutic
7 hospital outpatient services’ means hospital
8 services described in section 1861(s)(2)(B) fur-
9 nished by a hospital or critical access hospital
10 and includes—

11 “(i) cardiac rehabilitation services and
12 intensive cardiac rehabilitation services (as
13 defined in paragraphs (1) and (4), respec-
14 tively, of section 1861(eee)); and

15 “(ii) pulmonary rehabilitation services
16 (as defined in section 1861(fff)(1)).

17 “(B) GENERAL SUPERVISION.—

18 “(i) OVERALL DIRECTION AND CON-
19 TROL OF PHYSICIAN.—Subject to clause
20 (ii), with respect to the furnishing of
21 therapeutic hospital outpatient services for
22 which payment may be made under this
23 part, the term ‘general supervision’ means
24 such services that are furnished under the
25 overall direction and control of a physician

1 or non-physician practitioner, as the case
2 may be.

3 “(ii) PRESENCE NOT REQUIRED.—For
4 purposes of clause (i), the presence of a
5 physician or non-physician practitioner is
6 not required during the performance of the
7 procedure involved.

8 “(C) DIRECT SUPERVISION.—

9 “(i) PROVISION OF ASSISTANCE AND
10 DIRECTION.—Subject to clause (ii), with
11 respect to the furnishing of therapeutic
12 hospital outpatient services for which pay-
13 ment may be made under this part, the
14 term ‘direct supervision’ means that a phy-
15 sician or non-physician practitioner, as the
16 case may be, is immediately available (in-
17 cluding by telephone or other means) to
18 furnish assistance and direction through-
19 out the furnishing of such services. Such
20 term includes, with respect to the fur-
21 nishing of a therapeutic hospital outpatient
22 service for which payment may be made
23 under this part, direct supervision during
24 the initiation of the service followed by
25 general supervision for the remainder of

1 the service (as described in paragraph
2 (2)(A)(ii)).

3 “(ii) PRESENCE IN ROOM NOT RE-
4 QUIRED.—For purposes of clause (i), a
5 physician or non-physician practitioner, as
6 the case may be, is not required to be
7 present in the room during the perform-
8 ance of the procedure involved or within
9 any other physical boundary as long as the
10 physician or non-physician practitioner, as
11 the case may be, is immediately available.

12 “(D) NON-PHYSICIAN PRACTITIONER DE-
13 FINED.—The term ‘non-physician practitioner’
14 means an individual who—

15 “(i) is a physician assistant, a nurse
16 practitioner, a clinical nurse specialist, a
17 clinical social worker, a clinical psycholo-
18 gist, a certified nurse midwife, or a cer-
19 tified registered nurse anesthetist, and in-
20 cludes such other practitioners as the Sec-
21 retary may specify; and

22 “(ii) with respect to the furnishing of
23 therapeutic outpatient hospital services,
24 meets the requirements of paragraph
25 (4)(B).”.

1 (2) CONFORMING AMENDMENT.—Section
 2 1861(eee)(2)(B) of the Social Security Act (42
 3 U.S.C. 1395x(eee)(2)(B)) is amended by inserting “,
 4 and a non-physician practitioner (as defined in sec-
 5 tion 1833(z)(5)(D)) may supervise the furnishing of
 6 such items and services in the hospital” after “in
 7 the case of items and services furnished under such
 8 a program in a hospital, such availability shall be
 9 presumed”.

10 (b) PROHIBITION ON RETROACTIVE ENFORCEMENT
 11 OF REVISED INTERPRETATION.—

12 (1) REPEAL OF REGULATORY CLARIFICA-
 13 TION.—The restatement and clarification under the
 14 final rulemaking changes to the Medicare hospital
 15 outpatient prospective payment system and calendar
 16 year 2009 payment rates (published in the Federal
 17 Register on November 18, 2008, 73 Fed. Reg.
 18 68702 through 68704) with respect to requirements
 19 for direct supervision by physicians for therapeutic
 20 hospital outpatient services (as defined in paragraph
 21 (3)) for purposes of payment for such services under
 22 the Medicare program shall have no force or effect
 23 in law.

24 (2) HOLD HARMLESS.—A hospital or critical
 25 access hospital that furnishes therapeutic hospital

1 outpatient services during the period beginning on
 2 January 1, 2001, and ending on the later of Decem-
 3 ber 31, 2016, or the date on which the final regula-
 4 tion promulgated by the Secretary of Health and
 5 Human Services to carry out this Act takes effect,
 6 for which a claim for payment is made under part
 7 B of title XVIII of the Social Security Act shall not
 8 be subject to any civil or criminal action or penalty
 9 under Federal law for failure to meet supervision re-
 10 quirements under the regulation described in para-
 11 graph (1), under program manuals, or otherwise.

12 (3) THERAPEUTIC HOSPITAL OUTPATIENT
 13 SERVICES DEFINED.—In this subsection, the term
 14 “therapeutic hospital outpatient services” means
 15 medical and other health services furnished by a
 16 hospital or critical access hospital that are—

17 (A) hospital services described in sub-
 18 section (s)(2)(B) of section 1861 of the Social
 19 Security Act (42 U.S.C. 1395x);

20 (B) cardiac rehabilitation services or inten-
 21 sive cardiac rehabilitation services (as defined
 22 in paragraphs (1) and (4), respectively, of sub-
 23 section (eee) of such section); or

- 1 (C) pulmonary rehabilitation services (as
- 2 defined in subsection (fff)(1) of such section).

