

108TH CONGRESS
1ST SESSION

H. R. 792

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

FEBRUARY 13, 2003

Mr. CRANE (for himself, Mr. POMEROY, Mr. ABERCROMBIE, Mr. BOEHNER, Mrs. CAPPS, Mr. LINCOLN DIAZ-BALART of Florida, Mr. ENGLISH, Mrs. EMERSON, Mr. ETHERIDGE, Mr. FARR, Mr. GRAVES, Mr. LATHAM, Mr. LEACH, Mr. LYNCH, Mr. MARKEY, Mr. GARY G. MILLER of California, Mr. McNULTY, Mr. PAUL, Mr. TOWNS, Mr. YOUNG of Alaska, Mr. KILDEE, and Mr. FROST) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Medicare Patient Ac-
3 cess to Physical Therapists Act of 2003”.

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

7 (a) IN GENERAL.—

8 (1) ELIMINATION OF REQUIRED PHYSICIAN RE-
9 FERRAL.—

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

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

16 (ii) by amending paragraph (1) to
17 read as follows:

18 “(1) who is an outpatient, and”;

19 (iii) in paragraph (2)—

20 (I) by striking “physician (as so
21 defined) or by a qualified physical
22 therapist” and inserting “physician
23 (as defined in paragraph (1), (3), or
24 (4) of subsection (r)) or by a qualified
25 physical therapist (as defined in sec-
26 tion 1861(w))”; and

1 (II) by inserting “or a qualified
2 physical therapist (as so defined)”
3 after “physician” the second place it
4 appears;

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

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

16 (B) CONFORMING AMENDMENTS.—Section
17 1835(a)(2) of the Social Security Act (42
18 U.S.C. 1395n(a)(2)) is amended—

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

1 qualified physical therapist,” after “a phy-
2 sician”;

3 (ii) in subparagraph (C)—

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

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

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

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

18 (iii) in subparagraph (D)—

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

1 (II) in clause (i), by striking
2 “needed speech pathology services”
3 and inserting “needed occupational
4 therapy services or speech-language
5 pathology services, respectively”; and

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

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

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

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

1 “Qualified Physical Therapist

2 “(ww) The term ‘qualified physical therapist’ means
3 an individual who is licensed as a physical therapist by
4 the State in which such individual is practicing and who
5 meets the applicable requirements under paragraph (1) or
6 (2):

7 “(1) With respect to individuals graduating
8 from a professional physical therapy education pro-
9 gram on or after January 1, 2003, the individual—

10 “(A) has received a master’s or doctoral
11 degree from a professional physical therapy
12 education program that has been accredited by
13 a national physical therapy education accredi-
14 tation agency recognized by the Secretary of
15 Education; or

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

1 “(2) With respect to individuals licensed as
2 physical therapists by a State before 2003, the indi-
3 vidual was, or upon application to the Secretary
4 could have been, qualified under regulations of the
5 Secretary in effect before such date to furnish
6 physical therapy services under this title, as deter-
7 mined by the Secretary.”.

8 (b) PRESERVING EXISTING LAW FOR OUTPATIENT
9 OCCUPATIONAL THERAPY SERVICES.—

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

13 “Outpatient Occupational Therapy Services

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

21 “(1) who is under the care of a physician (as
22 defined in paragraph (1), (3), or (4) of subsection
23 (r));

24 “(2) with respect to whom a plan prescribing
25 the type, amount, and duration of occupational ther-

1 apy services that are furnished to such individual
2 has been established by a physician (as so defined)
3 or by an occupational therapist and is periodically
4 reviewed by a physician (as so defined);

5 excluding, however—

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

9 “(4) any such service—

10 “(A) if furnished by a clinic, rehabilitation
11 agency, or by others under arrangements with
12 such clinic or agency, unless such clinic or reha-
13 bilitation agency—

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

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

1 “(iii) maintains clinical records on all
2 patients;

3 “(iv) if such clinic or agency is situ-
4 ated in a State in which State or applica-
5 ble local law provides for the licensing of
6 institutions of this nature—

7 “(I) is licensed pursuant to such
8 law, or

9 “(II) is approved by the agency
10 of such State or locality responsible
11 for licensing institutions of this na-
12 ture, as meeting the standards estab-
13 lished for such licensing; and

14 “(v) meets such other conditions relat-
15 ing to the health and safety of individuals
16 who are furnished services by such clinic or
17 agency on an outpatient basis, as the Sec-
18 retary may find necessary, and provides
19 the Secretary on a continuing basis with
20 a surety bond that is not less than
21 \$50,000; or

22 “(B) if furnished by a public health agen-
23 cy, unless such agency meets such other condi-
24 tions relating to the safety of individuals who
25 are furnished services by such agency on an

1 outpatient basis, as the Secretary may find nec-
2 essary.

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

1 (2) CONFORMING AMENDMENTS.—

2 (A) SCOPE OF BENEFITS.—Section
3 1832(a)(2)(C) of the Social Security Act (42
4 U.S.C. 1395k(a)(2)(C)) is amended by striking
5 “such sentence applies through the operation of
6 section 1861(g))” and inserting “the second
7 sentence of section 1861(g) applies”).

8 (B) PAYMENT OF BENEFITS.—Section
9 1833(g)(3) of the Social Security Act (42
10 U.S.C. 1395l(g)(3)) is amended by striking
11 “section 1861(p)” and all that follows through
12 “section 1861(g)” and inserting “section
13 1861(g) (but not described in subsection
14 (a)(8)(B))”.

15 (C) PROVIDER CLAIMS PROCEDURES.—The
16 second sentence of section 1835(a) of the Social
17 Security Act (42 U.S.C. 1395n(a)) is amend-
18 ed—

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

24 (ii) by striking “section 1861(p)(4)(B)
25 (or meets the requirements of such section

1 through the operation of section 1861(g))”
2 and inserting “section 1861(p)(4)(B) or
3 section 1861(g)(4)(B)”;

4 (iii) by striking “(as therein defined)
5 or (through the operation of section
6 1861(g)) with respect to the furnishing of
7 outpatient occupational therapy services”
8 and inserting “(as defined in section
9 1861(p)) or outpatient occupational ther-
10 apy services (as defined in section
11 1861(g)), respectively”.

12 (D) AGREEMENTS WITH PROVIDERS.—Sec-
13 tion 1866(e)(1) of the Social Security Act (42
14 U.S.C. 1395cc(e)(1)) is amended—

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)”;

1 (iii) by striking “(as therein defined)
2 or (through the operation of section
3 1861(g)) with respect to the furnishing of
4 outpatient occupational therapy services”
5 and inserting “(as defined in section
6 1861(p)) or outpatient occupational ther-
7 apy services (as defined in section
8 1861(g)), respectively”.

9 (c) SEPARATE STATUTORY TREATMENT FOR OUT-
10 PATIENT PHYSICAL THERAPY SERVICES AND OUT-
11 PATIENT SPEECH-LANGUAGE PATHOLOGY SERVICES.—

12 (1) SCOPE OF BENEFITS.—Section
13 1832(a)(2)(C) of the Social Security Act (42 U.S.C.
14 1395k(a)(2)(C)), as amended by subsection
15 (b)(2)(A), is amended—

16 (A) by striking “and outpatient” and in-
17 serting “, outpatient”; and

18 (B) by inserting before the semicolon the
19 following: “, and outpatient speech-language pa-
20 thology services”.

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

24 (A) in subparagraphs (A) and (B) of sub-
25 section (a)(8), by striking “services, (which in-

1 cludes outpatient speech-language pathology
2 services) and outpatient occupational therapy
3 services” each place it appears and inserting
4 “services, outpatient occupational therapy serv-
5 ices, and outpatient speech-language pathology
6 services”; and

7 (B) in subsection (g)—

8 (i) in paragraphs (1) and (3), by
9 striking “paragraph (4)” each place it ap-
10 pears and inserting “paragraph (5)”; and

11 (ii) by redesignating paragraph (4) as
12 paragraph (5) and inserting after para-
13 graph (3) the following new paragraph:

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

24 (3) PROVIDER CLAIMS PROCEDURES.—The sec-
25 ond sentence of section 1835(a) of the Social Secu-

1 rity Act (42 U.S.C. 1395n(a)), as amended by sub-
2 section (b)(2)(C), is amended—

3 (A) by striking “or section 1861(g)(4)(A)”
4 and inserting “, section 1861(g)(4)(A), or sec-
5 tion 1861(ll)(5)(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)(4)(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)(4)(A))”.

15 (4) AGREEMENTS WITH PROVIDERS.—Section
16 1866(e)(1) of the Social Security Act (42 U.S.C.
17 1395cc(e)(1)), as amended by subsection (b)(2)(D),
18 is amended—

19 (A) by striking “or section 1861(g)(4)(A)”
20 and inserting “1861(g)(4)(A), or section
21 1861(ll)(5)(A)”;

22 (B) by striking “or section 1861(g)(4)(B)”
23 and inserting “, section 1861(g)(4)(B), or sec-
24 tion 1861(ll)(4)(B)(ii)(II)”;

1 (C) by striking “or outpatient occupational
2 services (as defined in section 1861(g))” and
3 inserting “, outpatient occupational services (as
4 defined in section 1861(g)), or outpatient
5 speech-language pathology services (as defined
6 in section 1861(ll)(4)(A))”.

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

9 (A) in subsection (p), by striking the
10 fourth sentence;

11 (B) in subsection (s)(2)(D), by striking
12 “services and outpatient occupational therapy
13 services” and inserting “services, outpatient oc-
14 cupational therapy services, and outpatient
15 speech-language pathology services”; and

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

18 “(4)(A) Subject to subparagraph (B), the term ‘out-
19 patient speech-language pathology services’ means speech-
20 language pathology services that are furnished by a pro-
21 vider of services, a clinic, a rehabilitation agency, or a pub-
22 lic health agency, or by others under an arrangement with,
23 and under the supervision of, such provider, clinic, reha-
24 bilitation agency, or public health agency to an individual
25 as an outpatient—

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

4 “(ii) with respect to whom a plan prescribing
5 the type, amount, and duration of speech-language
6 pathology services that are furnished to such indi-
7 vidual has been established by a physician (as so de-
8 fined) or by a qualified speech-language pathologist
9 and is periodically reviewed by a physician (as so de-
10 fined).

11 “(B) Such term does not include—

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

15 “(ii) any item or service—

16 “(I) if furnished by a clinic, rehabilitation
17 agency, or by others under arrangements with
18 such clinic or agency, unless such clinic or reha-
19 bilitation agency meets the requirements of
20 paragraph (5); and

21 “(II) if furnished by a public health agen-
22 cy, unless such agency meets such other condi-
23 tions relating to the safety of individuals who
24 are furnished services by such agency on an

1 outpatient basis, as the Secretary may find nec-
2 essary.

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

16 “(5) A clinic or rehabilitation agency meets the re-
17 quirements of this paragraph if it—

18 “(A) provides an adequate program of speech-
19 language pathology services for outpatients and has
20 the facilities and personnel required for such pro-
21 gram or required for the supervision of such a pro-
22 gram, in accordance with such requirements as the
23 Secretary may specify;

24 “(B) has policies, established by a group of pro-
25 fessional personnel, including one or more speech-

1 language pathologists, to govern the services (re-
2 ferred to in subparagraph (A)) it provides;

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

4 “(D) in the case of a clinic or agency that is
5 situated in a State in which State or applicable local
6 law provides for the licensing of institutions of this
7 nature—

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

9 “(ii) is approved by the agency of such
10 State or locality responsible for licensing insti-
11 tutions of this nature, as meeting the standards
12 established for such licensing; and

13 “(E) meets such other conditions relating to the
14 health and safety of individuals who are furnished
15 services by such clinic or agency on an outpatient
16 basis, as the Secretary may find necessary, and pro-
17 vides the Secretary on a continuing basis with a sur-
18 ety bond that is not less than \$50,000.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to items and services furnished on
21 or after January 1, 2003.

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