

111TH CONGRESS
2^D SESSION

H. R. 6376

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Mr. POMEROY (for himself and Mr. MORAN of Kansas) 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 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. REQUIREMENTS FOR PHYSICIAN SUPERVISION**
4 **OF THERAPEUTIC HOSPITAL OUTPATIENT**
5 **SERVICES.**

6 (a) THERAPEUTIC HOSPITAL OUTPATIENT SERV-
7 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 HIGHER
20 LEVELS 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
25 furnished under this part that, by reason of

1 complexity or high risk, require direct super-
2 vision (as defined in paragraph (5)(A)).

3 “(B) CONSULTATION WITH CLINICAL EX-
4 PERTS.—

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

14 “(ii) ADVISORY PANEL ON SUPER-
15 VISION OF THERAPEUTIC HOSPITAL OUT-
16 PATIENT SERVICES COMPRISED OF PHYSI-
17 CIANS AND NON-PHYSICIAN PRACTI-
18 TIONERS SERVING RURAL AND OTHER
19 AREAS.—For purposes of clause (i), a
20 panel of outside experts described in this
21 clause is a panel appointed by the Sec-
22 retary, based on nominations submitted by
23 hospital, rural health, and medical organi-
24 zations representing physicians or non-phy-

1 sician practitioners, as the case may be,
2 that meets the following requirements:

3 “(I) COMPOSITION.—The panel
4 shall be composed of at least 15 phy-
5 sicians and non-physician practi-
6 tioners who furnish therapeutic hos-
7 pital outpatient services for which
8 payment is made under this part and
9 who collectively represent the medical
10 specialties that furnish such services.

11 “(II) PRACTICAL EXPERIENCE.—
12 During the 12-month period preceding
13 appointment to the panel by the Sec-
14 retary, each physician or non-physi-
15 cian practitioner described in sub-
16 clause (I) shall have furnished thera-
17 peutic hospital outpatient services for
18 which payment was made under this
19 part.

20 “(III) MINIMUM RURAL REP-
21 RESENTATION REQUIREMENT.—Not
22 less than 50 percent of the member-
23 ship of the panel shall be physicians
24 or non-physician practitioners de-
25 scribed in subclause (I) who practice

1 in rural areas (as defined in section
2 1886(d)(2)(D)) or who furnish such
3 services in critical access hospitals.

4 “(C) SPECIAL RULE FOR OUTPATIENT
5 CRITICAL ACCESS HOSPITAL SERVICES.—Inso-
6 far as a therapeutic outpatient hospital service
7 that is an outpatient critical access hospital
8 service is designated as requiring direct super-
9 vision under the process established under sub-
10 paragraph (A), the Secretary shall deem the
11 critical access hospital furnishing that service
12 as having met the requirement for direct super-
13 vision for that service if, when furnishing such
14 service, the critical access hospital meets the
15 standard for personnel required as a condition
16 of participation under section 485.618(d) of
17 title 42, Code of Federal Regulations (as in ef-
18 fect on January 1, 2010).

19 “(D) CONSIDERATION OF COMPLIANCE
20 BURDENS.—Under the process established
21 under subparagraph (A), the Secretary shall
22 take into account the impact on hospitals and
23 critical access hospitals in complying with re-
24 quirements for direct supervision in the fur-
25 nishing of therapeutic hospital outpatient serv-

1 ices, including hospital resources, availability of
2 hospital-privileged physicians, specialty physi-
3 cians, and non-physician practitioners, and ad-
4 ministrative burdens.

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

13 “(3) INITIAL LIST OF DESIGNATED SERVICES.—
14 The Secretary shall include in the proposed and final
15 regulation for payment for hospital outpatient serv-
16 ices for 2012 under this part a list of initial thera-
17 peutic hospital outpatient services, if any, designated
18 under the process established under paragraph
19 (2)(A) as requiring direct supervision under such
20 part.

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

24 “(A) IN GENERAL.—Subject to the suc-
25 ceeding provisions of this subsection, a non-phy-

1 sician practitioner may directly supervise the
2 furnishing of—

3 “(i) therapeutic hospital outpatient
4 services under this part, including cardiac
5 rehabilitation services (under section
6 1861(eee)(1)), intensive cardiac rehabilita-
7 tion services (under section 1861(eee)(4)),
8 and pulmonary rehabilitation services
9 (under section 1861(fff)(1)); and

10 “(ii) those hospital outpatient diag-
11 nostic services (described in section
12 1861(s)(2)(C)) that require direct super-
13 vision under the fee schedule established
14 under section 1848.

15 “(B) REQUIREMENTS.—Subparagraph (A)
16 shall apply insofar as the non-physician practi-
17 tioner involved meets the following require-
18 ments:

19 “(i) SCOPE OF PRACTICE.—The non-
20 physician practitioner is acting within the
21 scope of practice under State law applica-
22 ble to the practitioner.

23 “(ii) ADDITIONAL REQUIREMENTS.—
24 The non-physician practitioner meets such
25 requirements as the Secretary may specify.

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

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

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

12 “(ii) pulmonary rehabilitation services
13 (as defined in section 1861(fff)(1)).

14 “(B) GENERAL SUPERVISION.—

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

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

6 “(C) DIRECT SUPERVISION.—

7 “(i) PROVISION OF ASSISTANCE AND
8 DIRECTION.—Subject to clause (ii), with
9 respect to the furnishing of therapeutic
10 hospital outpatient services for which pay-
11 ment may be made under this part, the
12 term ‘direct supervision’ means that a phy-
13 sician or non-physician practitioner, as the
14 case may be, is able to furnish assistance
15 and direction throughout the furnishing of
16 such services and, in accordance with the
17 policies, procedures, guidelines or bylaws of
18 the hospital—

19 “(I) with respect to such services
20 furnished in the hospital, or in an on-
21 campus department of such hospital,
22 is present and on the same campus
23 and immediately available (including
24 by telephone or other means) to fur-
25 nish such assistance and direction; or

1 “(II) with respect to such serv-
2 ices furnished in an off-campus pro-
3 vider-based department of such hos-
4 pital, is present in or in close prox-
5 imity to such department and is im-
6 mediately available (including by tele-
7 phone or other means) to furnish such
8 assistance and direction.

9 “(ii) PRESENCE IN ROOM NOT RE-
10 QUIRED.—For purposes of clause (i), a
11 physician or non-physician practitioner, as
12 the case may be, is not required to be
13 present in the room during the perform-
14 ance of the procedure involved.

15 “(D) NON-PHYSICIAN PRACTITIONER DE-
16 FINED.—The term ‘non-physician practitioner’
17 means an individual who—

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

1 “(ii) with respect to the furnishing of
2 therapeutic outpatient hospital services,
3 meets the requirements of paragraph
4 (4)(B).”.

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

14 (b) PROHIBITION ON RETROACTIVE ENFORCEMENT
15 OF REVISED INTERPRETATION.—

16 (1) REPEAL OF REGULATORY CLARIFICA-
17 TION.—The restatement and clarification under the
18 final rule making changes to the Medicare hospital
19 outpatient prospective payment system and calendar
20 year 2009 payment rates (published in the Federal
21 Register on November 18, 2008, 73 Fed. Reg.
22 68702 through 68704) with respect to requirements
23 for direct supervision by physicians for therapeutic
24 hospital outpatient services (as defined in paragraph
25 (3)) for purposes of payment for such services under

1 the Medicare program shall have no force or effect
2 in law.

3 (2) HOLD HARMLESS.—A hospital or critical
4 access hospital that furnishes therapeutic hospital
5 outpatient services during the period beginning on
6 January 1, 2001, and ending on December 31,
7 2011, for which a claim for payment is made under
8 part B of title XVIII of the Social Security Act shall
9 not be subject to any civil or criminal action or pen-
10 alty under Federal law for failure to meet super-
11 vision requirements under the regulation described
12 in paragraph (1), under program manuals, or other-
13 wise.

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

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

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

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

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