

114TH CONGRESS  
1ST SESSION

# H. R. 1526

To amend title XVIII of the Social Security Act to modify policies relating to payment under the Medicare program for durable medical equipment, orthotics and prosthetics, and prosthetic devices, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2015

Mr. MEADOWS introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 modify policies relating to payment under the Medicare program for durable medical equipment, orthotics and prosthetics, and prosthetic devices, 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 Audit Im-  
5 provement Act of 2015”.

1 **SEC. 2. MEDICARE PAYMENT FOR DURABLE MEDICAL**  
2 **EQUIPMENT, ORTHOTICS AND PROSTHETICS,**  
3 **AND PROSTHETIC DEVICES.**

4 (a) USE OF PROSTHETIST AND ORTHOTIST NOTES  
5 FOR DETERMINATIONS OF MEDICAL NECESSITY.—Sec-  
6 tion 1834(h)(1) of the Social Security Act (42 U.S.C.  
7 1395m(h)(1)) is amended by adding at the end the fol-  
8 lowing new subparagraph:

9 “(I) USE OF PROSTHETIST AND  
10 ORTHOTIST NOTES FOR DETERMINATIONS OF  
11 MEDICAL NECESSITY.—In determining under  
12 section 1862(a)(1) whether an orthotic or pros-  
13 thetic or prosthetic device furnished to an indi-  
14 vidual on or after the date of the enactment of  
15 this subparagraph is reasonable and necessary,  
16 any records or documentation of an orthotist or  
17 prosthetist who furnished such orthotic or pros-  
18 thetic or prosthetic device to such individual  
19 shall be considered part of the medical record  
20 of the individual.”.

21 (b) AUTHORIZING MAC AND RAC REVIEW FOR SUP-  
22 PLIER LICENSE OR ACCREDITATION FOR DURABLE MED-  
23 ICAL EQUIPMENT AND ORTHOTICS AND PROSTHETICS.—

24 (1) MAC REVIEW.—Section 1874A(a)(4)(A) of  
25 the Social Security Act (42 U.S.C. 1395kk-  
26 1(a)(4)(A)) is amended by inserting “, including de-

1       termining that payment shall not be made to a sup-  
2       plier of durable medical equipment, or of orthotics  
3       and prosthetics, for which a claim for payment is  
4       made on or after the date of the enactment of the  
5       Medicare Audit Improvement Act of 2015 on ac-  
6       count of the application of section 1834(h)(1)(F)  
7       (relating to supplier licensing or accreditation by a  
8       National Board)” before the period at the end.

9               (2) RAC REVIEW.—Section 1893(h) of the So-  
10       cial Security Act (42 U.S.C. 1395ddd(h)) is amend-  
11       ed by adding at the end the following new para-  
12       graph:

13               “(10) REVIEW OF SUPPLIER LICENSE OR AC-  
14       CREDITATION FOR DURABLE MEDICAL EQUIPMENT  
15       AND ORTHOTICS AND PROSTHETICS.—For purposes  
16       of paragraph (1), with respect to durable medical  
17       equipment and orthotics and prosthetics for which a  
18       claim for payment was made by a supplier in 2011  
19       or a subsequent year, a payment that should not  
20       have been made to such supplier for such durable  
21       medical equipment or such orthotics and prosthetics  
22       on account of the application of section  
23       1834(h)(1)(F) (relating to supplier licensing or ac-  
24       creditation by a National Board) shall be considered  
25       an overpayment under this title.”.

1 (c) EXEMPTING SERVICES THAT RECEIVE PRIOR  
2 AUTHORIZATION FROM RAC REVIEW.—Section 1893(h)  
3 of the Social Security Act (42 U.S.C. 1395ddd(h)), as  
4 amended by subsection (b)(2), is further amended—

5 (1) in paragraph (1), by inserting “subject to  
6 paragraph (11),” after “Program,”; and

7 (2) by adding at the end the following new  
8 paragraph:

9 “(11) SERVICES THAT RECEIVE PRIOR AUTHOR-  
10 IZATION EXEMPTED FROM REVIEW.—Recovery audit  
11 contractors may not conduct reviews with respect to  
12 payments under this title for durable medical equip-  
13 ment, orthotics or prosthetics, or prosthetic devices  
14 for which audits under this subsection have not been  
15 initiated before the date of the enactment of this  
16 paragraph and to which prior authorization under  
17 this title applies.”.

18 (d) ANNUAL REPORT ON OVERTURNED MAC AND  
19 RAC DENIALS.—Section 1874A of the Social Security Act  
20 (42 U.S.C. 1395kk–1) is amended by adding at the end  
21 the following new subsection:

22 “(h) ANNUAL REPORT ON OVERTURNED MAC AND  
23 RAC DENIALS.—

24 “(1) IN GENERAL.—Not later than March 1 of  
25 2016, and of each year thereafter, the Secretary

1 shall submit to Congress a report that includes the  
2 information described in paragraph (2).

3 “(2) INFORMATION DESCRIBED.—The informa-  
4 tion described in this paragraph, with respect to de-  
5 terminations by medicare administrative contractors  
6 that payment cannot be made, and by recovery audit  
7 contractors that payment should not have been  
8 made, under this title for items and services, is the  
9 following:

10 “(A) The number of such determinations  
11 that, in the prior year, were determined on ap-  
12 peal to have been incorrect.

13 “(B) The HCPCS codes that, in the prior  
14 year, accounted for—

15 “(i) the greatest number of such de-  
16 terminations; and

17 “(ii) the greatest total amount pay-  
18 ment being at issue in such determina-  
19 tions.

20 “(C) The number of such determinations  
21 that, in the prior year, were based upon a de-  
22 termination—

23 “(i) that the items and services were  
24 furnished to an individual as an inpatient  
25 rather than as an outpatient;

1 “(ii) regarding the application of the  
2 medical review activities described in the  
3 notice entitled ‘Selecting Hospital Claims  
4 for Patient Status Reviews: Admissions On  
5 or After October 1, 2013’, posted on the  
6 Internet website of the Centers for Medi-  
7 care & Medicaid Services (commonly  
8 known as the ‘two-midnights rule’);

9 “(iii) that applied to a provider of  
10 outpatient services; and

11 “(iv) regarding a claim for payment  
12 for orthotics or prosthetics or prosthetic  
13 devices.”.

14 (e) TREATING ORTHOTICS AND PROSTHETICS SEPA-  
15 RATELY FROM MEDICAL EQUIPMENT AND SUPPLIES.—

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

18 (A) in subsection (j)(5)—

19 (i) by striking subparagraph (C); and

20 (ii) by redesignating subparagraphs  
21 (D) through (F) as subparagraphs (C)  
22 through (E), respectively;

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

1       “(r) REQUIREMENTS FOR ORTHOTISTS AND  
2 PROSTHETISTS.—

3               “(1) ISSUANCE AND RENEWAL OF SUPPLIER  
4 NUMBER.—

5               “(A) PAYMENT.—No payment may be  
6 made under this part for orthotics and pros-  
7 thetics (as described in section 1861(s)(9)) fur-  
8 nished by a supplier of orthotics and prosthetics  
9 unless such supplier obtains (and renews at  
10 such intervals as the Secretary may require) a  
11 supplier number.

12               “(B) STANDARDS FOR POSSESSING A SUP-  
13 PLIER NUMBER.—A supplier of orthotics and  
14 prosthetics may not obtain a supplier number  
15 unless the supplier—

16               “(i) complies with all applicable State  
17 and Federal licensure and regulatory re-  
18 quirements;

19               “(ii) acquires accreditation from the  
20 American Board for Certification in  
21 Orthotics, Prosthetics and Pedorthics, Inc.,  
22 the Board of Certification/Accreditation,  
23 International, or such other accreditation  
24 entity that the Secretary determines to  
25 have accreditation standards that are

1 equivalent to the accreditation standards of  
2 such boards;

3 “(iii) maintains a physical facility on  
4 an appropriate site;

5 “(iv) has proof of appropriate liability  
6 insurance; and

7 “(v) meets such other requirements as  
8 the Secretary may specify.

9 “(C) PROHIBITION AGAINST MULTIPLE  
10 SUPPLIER NUMBERS.—The Secretary may not  
11 issue more than one supplier number to any  
12 supplier of orthotics and prosthetics unless the  
13 issuance of more than one number is appro-  
14 priate to identify other entities under the sup-  
15 plier’s ownership or control.

16 “(D) PROHIBITION AGAINST DELEGATION  
17 OF SUPPLIER DETERMINATIONS.—The Sec-  
18 retary may not delegate (other than by contract  
19 under section 1842) the responsibility to deter-  
20 mine whether suppliers meet the standards nec-  
21 essary to obtain a supplier number.

22 “(E) CONSTRUCTION RELATING TO PRE-  
23 VIOUSLY ISSUED AND RENEWED SUPPLIER  
24 NUMBERS.—Supplier numbers obtained under  
25 subsection (j)(1) prior to the enactment of this



1 subsection by suppliers of orthotics and pros-  
2 thetics that meet the standards described in  
3 subparagraph (B) shall be considered to have  
4 obtained a supplier number for purposes of sub-  
5 paragraph (A).

6 “(2) CERTIFICATES OF MEDICAL NECESSITY.—

7 “(A) INFORMATION PROVIDED BY SUP-  
8 PLIERS OF ORTHOTICS AND PROSTHETICS ON  
9 CERTIFICATES OF MEDICAL NECESSITY.—

10 “(i) IN GENERAL.—A supplier of  
11 orthotics and prosthetics may distribute to  
12 physicians, or to individuals entitled to  
13 benefits under this part, a certificate of  
14 medical necessity for commercial purposes  
15 if the certificate contains the following in-  
16 formation:

17 “(I) An identification of the sup-  
18 plier and the beneficiary to whom  
19 such orthotics and prosthetics are fur-  
20 nished.

21 “(II) An identification of the  
22 treating physician, including the  
23 name, Medicare provider number, ad-  
24 dress, and telephone number of such  
25 physician.

1           “(III) A description of such  
2 orthotics and prosthetics.

3           “(IV) Any billing code identifying  
4 such orthotics and prosthetics, includ-  
5 ing the HCPCS codes, and summary  
6 descriptors of the items and services  
7 being recommended.

8           “(V) The codes used under this  
9 title for payment for such orthotics  
10 and prosthetics, a description of the  
11 medical and functional condition of  
12 the beneficiary, and information about  
13 the need of the beneficiary for the  
14 orthotics or prosthetics.

15           “(VI) Any other administrative  
16 information identified by the Sec-  
17 retary.

18           “(ii) INFORMATION ON PAYMENT  
19 AMOUNT AND CHARGES.—If a supplier dis-  
20 tributes a certificate of medical necessity  
21 for orthotics and prosthetics, the supplier  
22 shall also list on the certificate of medical  
23 necessity the fee schedule amount and the  
24 supplier’s charge for the orthotics and  
25 prosthetics being furnished prior to dis-

1                   tribution of such certificate to the physi-  
2                   cian.

3                   “(iii) PENALTY.—Any supplier of  
4                   orthotics and prosthetics who knowingly  
5                   and willfully distributes a certificate of  
6                   medical necessity in violation of clause (i)  
7                   or fails to provide the information required  
8                   under clause (ii) or (iii) is subject to a civil  
9                   money penalty in an amount not to exceed  
10                  \$1,000 for each such certificate of medical  
11                  necessity so distributed. The provisions of  
12                  section 1128A (other than subsections (a)  
13                  and (b)) shall apply to civil money pen-  
14                  alties under this subparagraph in the same  
15                  manner as they apply to a penalty or pro-  
16                  ceeding under section 1128A(a).

17                  “(B) SIGNATURE OF TREATING PHYSICIAN  
18                  REQUIRED.—The Secretary shall require that,  
19                  in order for a certificate of medical necessity  
20                  submitted to the Secretary to be treated as  
21                  showing that orthotics and prosthetics are rea-  
22                  sonable and necessary for the diagnosis or  
23                  treatment of an illness or injury or to improve  
24                  the functioning of a malformed body member,

1 the certificate of medical necessity be signed by  
2 the treating physician.

3 “(C) DEFINITION.—For purposes of this  
4 paragraph, the term ‘certificate of medical ne-  
5 cessity’ means a form or other document, in-  
6 cluding a detailed written order, containing in-  
7 formation required by the Secretary to be sub-  
8 mitted to show that orthotics and prosthetics  
9 are reasonable and necessary for the diagnosis  
10 or treatment of illness or injury or to improve  
11 the functioning of a malformed body member.

12 “(3) COVERAGE AND REVIEW CRITERIA.—The  
13 Secretary shall annually review the coverage and uti-  
14 lization of orthotics and prosthetics to determine  
15 whether such orthotics and prosthetics should be  
16 made subject to coverage and utilization review cri-  
17 teria, and if appropriate, shall develop and apply  
18 such criteria to such items.

19 “(4) LIMITATION ON PATIENT LIABILITY.—

20 “(A) IN GENERAL.—Subject to subpara-  
21 graph (B), if a supplier of orthotics and pros-  
22 thetics furnishes orthotics and prosthetics to an  
23 individual for which no payment may be made  
24 under this part (including, subject to section  
25 1879, because the orthotics and prosthetics are

1 not reasonable and necessary for the diagnosis  
2 or treatment of illness or injury or to improve  
3 the functioning of a malformed body member,  
4 as required under section 1862(a)(1)), any ex-  
5 penses incurred for such orthotics and pros-  
6 thetics furnished to an individual by such a  
7 supplier not on an assigned basis shall be the  
8 responsibility of such supplier. The individual  
9 shall have no financial responsibility for such  
10 expenses and the supplier shall refund on a  
11 timely basis to the individual (and shall be lia-  
12 ble to the individual for) any amounts collected  
13 from the individual for such items or services.  
14 The provisions of subsection (a)(18) shall apply  
15 to refunds required under the previous sentence  
16 in the same manner as such provisions apply to  
17 refunds under such subsection.

18 “(B) EXCEPTION.—If a supplier of  
19 orthotics and prosthetics furnishes orthotics  
20 and prosthetics to an individual for which pay-  
21 ment is denied in advance under subsection  
22 (a)(15), expenses incurred for such orthotics  
23 and prosthetics shall be the responsibility of the  
24 individual.”.

1           (2) CONFORMING AMENDMENTS.—Section  
2       1865(a)(1) of the Social Security Act (42 U.S.C.  
3       1395bb(a)(1)) is amended by inserting “or section  
4       1834(r), as applicable,” after “section 1834(j)”.

5           (f) LIMITATION OF COMPETITIVE ACQUISITION FOR  
6 OFF-THE-SHELF ORTHOTICS.—Section 1847(a)(7)(A) of  
7 the Social Security Act (42 U.S.C. 1395w–3(a)(7)(A)) is  
8 amended—

9           (1) in clause (i), by striking “or” at the end;

10          (2) by redesignating clause (ii) as clause (iii);

11          and

12          (3) by inserting after clause (i) the following  
13          new clause:

14                               “(ii) by an orthotist or prosthetist de-  
15                               scribed in subclause (II) or (III) of section  
16                               1834(h)(1)(F)(iii) to the patients of the  
17                               orthotist or prosthetist as part of the pro-  
18                               fessional service of the orthotist or pros-  
19                               thetist; or”.

20          (g) LIMITING RECOUPMENT FROM MEDICARE AP-  
21 PELLANTS UNTIL COMPLETION OF ALJ APPEALS PROC-  
22 ESS.—Section 1869 of the Social Security Act (42 U.S.C.  
23 1395ff) is amended by adding at the end the following  
24          new subsection:

1       “(j) LIMITATION ON RECOUPMENT PRIOR TO COM-  
2 PLETION OF ALJ APPEALS PROCESS.—

3           “(1) IN GENERAL.—Notwithstanding any other  
4 provision of this section, the Secretary may not re-  
5 coup more than half of the amount of any payments  
6 made to a qualifying provider or supplier with re-  
7 spect to a claim for items or services that is subject  
8 to a determination, reconsideration, or hearing  
9 under this subsection, before—

10           “(A) the date on which a decision has been  
11 rendered under subsection (d)(1) with respect  
12 to such claim; or

13           “(B) in the case of a determination or re-  
14 consideration for such claim which is not eligi-  
15 ble for a hearing under subsection (d)(1), the  
16 date on which the appeals process for such  
17 claim under this section (other than subsection  
18 (h)) is treated as exhausted.

19           “(2) QUALIFYING PROVIDER OR SUPPLIER DE-  
20 FINED.—For purposes of paragraph (1), the term  
21 ‘qualifying provider or supplier’ means a provider of  
22 services or supplier that—

23           “(A) has maintained a Medicare provider  
24 number for six years or longer;

1           “(B) is not under investigation for any po-  
2           tential violations of applicable Federal and  
3           State laws and regulations;

4           “(C) has a good record of submitting prop-  
5           er claims for items or services under this title,  
6           as determined by the Secretary; and

7           “(D) furnished the items or services de-  
8           scribed in paragraph (1) to an individual in  
9           person.”.

10           (h) ELIGIBILITY FOR PAYMENT FOR SUPPLIERS AND  
11 PROVIDERS BASED ON QUALIFICATIONS.—

12           (1) IN GENERAL.—Title XVIII of the Social Se-  
13           curity Act is amended by inserting after section  
14           1863 (42 U.S.C. 1395z) the following new section:

15           **“SEC. 1863A. ELIGIBILITY FOR PAYMENT FOR SUPPLIERS**  
16           **AND PROVIDERS BASED ON QUALIFICATIONS.**

17           “(a) IN GENERAL.—No payment may be made under  
18 this title for an item or service that is furnished—

19           “(1) in a State that requires a provider or sup-  
20           plier to be licensed in order to furnish such item or  
21           service, unless the provider or supplier furnishing  
22           such item or service possesses all applicable licensure  
23           from the State; or

24           “(2) in a State that does not require a provider  
25           or supplier to be licensed in order to furnish such



1 item or service, unless the provider or supplier meets  
2 all applicable qualifications, as determined by the  
3 Secretary.

4 “(b) APPLICABLE QUALIFICATIONS DEFINED.—For  
5 purposes of subsection (a), the term ‘applicable qualifica-  
6 tions’ means, with respect to a provider or supplier, all  
7 applicable accreditations, certifications, and credentials re-  
8 quired of such provider or supplier under this title in order  
9 for such provider and supplier to receive payment under  
10 this title for items or services furnished by such provider  
11 or supplier, including the requirements described in the  
12 special payment rules for certain prosthetics and custom-  
13 fabricated orthotics under section 1834(h)(1)(F).”.

14 (2) EFFECTIVE DATE.—This section shall apply  
15 with respect to items and services furnished on or  
16 after the date of the enactment of this section.

○