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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

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A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Access to Rural Therapy Services (PARTS) Act''.

SEC. 2. REQUIREMENTS FOR PHYSICIAN SUPERVISION OF THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.

(a) THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—

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

"(z) PHYSICIAN SUPERVISION REQUIREMENTS FOR THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—

"(1) GENERAL SUPERVISION FOR THERAPEUTIC SERVICES.—Except as may be provided under paragraph (2), insofar as the Secretary requires the supervision by a physician or a non-physician practitioner for payment for therapeutic hospital outpatient services (as defined in paragraph (5)(A)) furnished under this part, such requirement shall be met if such services are furnished under the general supervision (as defined in paragraph (5)(B)) of the physician or non-physician practitioner, as the case may be.

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

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, the Secretary shall establish a process for the designation of therapeutic hospital outpatient services

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

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

"(ii) direct supervision during the initiation of the service followed by general supervision for the remainder of the service.

"(B) CONSULTATION WITH CLINICAL EXPERTS.—

"(i) IN GENERAL.—Under the process established under subparagraph (A), before the designation of any therapeutic hospital outpatient service for which direct supervision may be required under this part, the Secretary shall consult with a panel of outside experts described in clause (ii) to advise the Secretary with respect to each such designation.

"(ii) ADVISORY PANEL ON SUPERVISION OF THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—For purposes of clause (i), a panel of outside experts described in this clause is a panel appointed 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-

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

"(III) MINIMUM RURAL REPRESENTATION REQUIREMENT FOR PHYSICIANS AND NON-PHYSICIAN PRACTITIONERS.—Not less than 50 percent of the membership of the panel that is comprised of physicians and non-physician practitioners shall be physicians or non-physician practitioners described in subclause (I) who practice in rural areas (as defined in section 1886(d)(2)(D)) or who furnish such services in critical access hospitals.

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

"(C) SPECIAL RULE FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—Insofar as a therapeutic outpatient hospital service

that is an outpatient critical access hospital service is designated as requiring direct supervision under the process established under subparagraph (A), the Secretary shall deem the critical access hospital furnishing that service as having met the requirement for direct supervision for that service if, when furnishing such service, the critical access hospital meets the standard for personnel required as a condition of participation under section 485.618(d) of title 42, Code of Federal Regulations (as in effect on the date of the enactment of this subsection).

"(D) CONSIDERATION OF COMPLIANCE BURDENS.—Under the process established under subparagraph (A), the Secretary shall take into account the impact on hospitals and critical access hospitals in complying with requirements for direct supervision in the furnishing of therapeutic hospital outpatient services, including hospital resources, availability of hospital-privileged physicians, specialty physicians, and non-physician practitioners, and administrative burdens.

"(E) REQUIREMENT FOR NOTICE AND COMMENT RULEMAKING.—Under the process established under subparagraph (A), the Secretary shall only designate therapeutic hospital outpatient services requiring direct supervision under this part through proposed and final rulemaking that provides for public notice and opportunity for comment.

"(F) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as authorizing the Secretary to apply or require any level of supervision other than general or direct supervision with respect to the furnishing of therapeutic hospital outpatient services.

"(3) INITIAL LIST OF DESIGNATED SERVICES.—The Secretary shall include in the proposed and final regulation for payment for hospital outpatient services for 2017 under this part a list of initial therapeutic hospital outpatient services, if any, designated under the process established under paragraph (2)(A) as requiring direct supervision under this part.

"(4) DIRECT SUPERVISION BY NON-PHYSICIAN PRACTITIONERS FOR CERTAIN HOSPITAL OUTPATIENT 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.

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

"(5) DEFINITIONS.—In this subsection:

"(A) THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—The term 'therapeutic hospital outpatient services' means hospital services described in section 1861(s)(2)(B) furnished by a hospital or critical access hospital and includes—

"(i) cardiac rehabilitation services and intensive cardiac rehabilitation services (as defined in paragraphs (1) and (4), respectively, of section 1861(eee)); and

"(ii) pulmonary rehabilitation services (as defined in section 1861(fff)(1)).

"(B) GENERAL SUPERVISION.—

"(i) OVERALL DIRECTION AND CONTROL OF PHYSICIAN.—Subject to clause (ii), with respect to the furnishing of therapeutic hospital outpatient services for which payment may be made under this part, the term 'general supervision' means such services that are furnished under the overall direction and control of a physician

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

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

"(C) DIRECT SUPERVISION.—

"(i) PROVISION OF ASSISTANCE AND DIRECTION.—Subject to clause (ii), with respect to the furnishing of therapeutic hospital outpatient services for which payment may be made under this part, the term 'direct supervision' means that a physician or non-physician practitioner, as the case may be, is immediately available (including by telephone or other means) to furnish assistance and direction throughout the furnishing of such services. Such term includes, with respect to the furnishing of a therapeutic hospital outpatient service for which payment may be made under this part, direct supervision during the initiation of the service followed by general supervision for the remainder of

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

"(ii) PRESENCE IN ROOM NOT REQUIRED.—For purposes of clause (i), a physician or non-physician practitioner, as the case may be, is not required to be present in the room during the performance of the procedure involved or within any other physical boundary as long as the physician or non-physician practitioner, as the case may be, is immediately available.

"(D) NON-PHYSICIAN PRACTITIONER DEFINED.—The term 'non-physician practitioner' means an individual who—

"(i) is a physician assistant, a nurse practitioner, a clinical nurse specialist, a clinical social worker, a clinical psychologist, a certified nurse midwife, or a certified registered nurse anesthetist, and includes such other practitioners as the Secretary may specify; and

"(ii) with respect to the furnishing of therapeutic outpatient hospital services, meets the requirements of paragraph (4)(B).".

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

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

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

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

outpatient services during the period beginning on January 1, 2001, and ending on the later of December 31, 2016, or the date on which the final regulation promulgated by the Secretary of Health and Human Services to carry out this Act takes effect, for which a claim for payment is made under part B of title XVIII of the Social Security Act shall not be subject to any civil or criminal action or penalty under Federal law for failure to meet supervision requirements under the regulation described in paragraph (1), under program manuals, or otherwise.

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

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

(B) cardiac rehabilitation services or intensive cardiac rehabilitation services (as defined in paragraphs (1) and (4), respectively, of subsection (eee) of such section); or

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

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