To amend title XVIII of the Social Security Act to include recreational therapy among the therapy modalities that constitute an intensive rehabilitation therapy program in an inpatient rehabilitation hospital or unit.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mr. THOMPSON of Pennsylvania (for himself and Mr. BUTTERFIELD) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend title XVIII of the Social Security Act to include recreational therapy among the therapy modalities that constitute an intensive rehabilitation therapy program in an inpatient rehabilitation hospital or unit.

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 “Access to Inpatient
5 Rehabilitation Therapy Act of 2017”.

6 SEC. 2. FINDINGS AND PURPOSE.

7 (a) FINDINGS.—Congress finds the following:
(1) Intensive, coordinated medical rehabilitation provided in inpatient rehabilitation hospitals and units is critical to Medicare beneficiaries with injuries, illnesses, disabilities, and chronic conditions in order to return to health, full function, independent living, and a high quality of life.

(2) The Centers for Medicare & Medicaid Services (in this section referred to as “CMS”) uses an “intensity of therapy” requirement to help determine which Medicare beneficiaries are appropriate for treatment in an inpatient rehabilitation hospital or unit. CMS has interpreted the intensity of therapy requirement through application of the so-called “Three Hour Rule” (42 C.F.R. 412.622(a)(3)(ii)) which requires the patient to be able to participate in three hours of rehabilitation therapy per day, five days per week, or 15 hours of rehabilitation therapy over a one-week period.

(3) Before 2010, CMS regulations explicitly stated that physical therapy, occupational therapy, speech therapy, and/or orthotics and prosthetics were counted toward the Three Hour Rule on an as-needed basis. In addition, CMS regulations stated that “other therapeutic modalities” that were determined by the physician and the rehabilitation team
to be needed by the patient “on a priority basis”
would qualify toward satisfaction of the rule (HCFA
Ruling 85–2).

(4) This language allowed recreational therapy
to count toward satisfaction of the Three Hour Rule
for patients who required this mix of therapies on a
priority basis in the inpatient rehabilitation hospital
or unit setting.

(5) CMS by regulation (74 Fed. Reg. 39811
(August 7, 2009)) revised these prior regulations, ef-
fective January 1, 2010, by limiting the Three Hour
Rule to recognize only four services (namely, phys-
ical, occupational, and speech therapy as well as
orthotics and prosthetics) and removing the discre-
tion of the physician and the rehabilitation team to
count other therapeutic services needed by the pa-
tient toward satisfaction of the Three Hour Rule. As
a result, recreational therapy services are often not
available to patients who require medically necessary
recreational therapy as part of their plan of care.

(6) Recreational therapy is a treatment service
designed to restore, remediate, and rehabilitate a pa-
tient’s level of functioning and independence in life
activities, to promote health and wellness as well as
to reduce or eliminate the activity limitations and re-
strictions to participation in life situations caused by an illness or disabling condition. Recreational therapy in the inpatient rehabilitation hospital and unit setting is provided by qualified recreational therapists when required by the patient’s condition and prescribed by a physician as part of a patient’s plan of care.

(b) PURPOSE.—It is the purpose of this Act to restore reliance on the professional judgment of the treating physician and the rehabilitation team when determining whether a Medicare patient meets the intensity of therapy requirement of an inpatient rehabilitation hospital or unit in order for that patient to gain access to the appropriate mix of medically necessary therapeutic rehabilitation services in that setting, including physical therapy, occupational therapy, and, as needed, speech therapy, orthotics and prosthetics, and recreational therapy.
SEC. 3. INCLUDING RECREATIONAL THERAPY AMONG THE THERAPY MODALITIES THAT CONSTITUTE AN INTENSIVE REHABILITATION THERAPY PROGRAM IN DETERMINING THE MEDICAL NECESSITY OF SERVICES IN AN INPATIENT REHABILITATION FACILITY (IRF).

(a) In General.—Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)) is amended by adding at the end the following new paragraph:

“(9) INCLUDING RECREATIONAL THERAPY AMONG THERAPY MODALITIES THAT CONSTITUTE AN INTENSIVE REHABILITATION THERAPY PROGRAM IN A REHABILITATION FACILITY.—The Secretary shall include recreational therapy services among the therapeutic modalities that constitute an intensive rehabilitation program in determining (pursuant to applicable regulations) whether inpatient services in a rehabilitation facility are reasonable and necessary under section 1862(a)(1)(A).”.

(b) Effective Date.—The amendment made by section (a) shall apply to services furnished on or after January 1, 2018.