

113TH CONGRESS
1ST SESSION

S. _____

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

Mr. MORAN (for himself, Mr. THUNE, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on

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. SHORT TITLE.**

4 This Act may be cited as the “Protecting Access to
5 Rural Therapy Services (PARTS) Act”.

1 **SEC. 2. REQUIREMENTS FOR PHYSICIAN SUPERVISION OF**
2 **THERAPEUTIC HOSPITAL OUTPATIENT SERV-**
3 **ICES.**

4 (a) THERAPEUTIC HOSPITAL OUTPATIENT SERV-
5 ICES.—

6 (1) SUPERVISION REQUIREMENTS.—Section
7 1833 of the Social Security Act (42 U.S.C. 1395l)
8 is amended by adding at the end the following new
9 subsection:

10 “(z) PHYSICIAN SUPERVISION REQUIREMENTS FOR
11 THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—

12 “(1) GENERAL SUPERVISION FOR THERAPEUTIC
13 SERVICES.—Except as may be provided under para-
14 graph (2), insofar as the Secretary requires the su-
15 pervision by a physician or a non-physician practi-
16 tioner for payment for therapeutic hospital out-
17 patient services (as defined in paragraph (5)(A))
18 furnished under this part, such requirement shall be
19 met if such services are furnished under the general
20 supervision (as defined in paragraph (5)(B)) of the
21 physician or non-physician practitioner, as the case
22 may be.

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

1 “(A) IN GENERAL.—Subject to the suc-
2 ceeding provisions of this paragraph, the Sec-
3 retary shall establish a process for the designa-
4 tion of therapeutic hospital outpatient services
5 furnished under this part that, by reason of
6 complexity or high risk, require—

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

9 “(ii) direct supervision during the ini-
10 tiation of the service followed by general
11 supervision for the remainder of the serv-
12 ice.

13 “(B) CONSULTATION WITH CLINICAL EX-
14 PERTS.—

15 “(i) IN GENERAL.—Under the process
16 established under subparagraph (A), before
17 the designation of any therapeutic hospital
18 outpatient service for which direct super-
19 vision may be required under this part, the
20 Secretary shall consult with a panel of out-
21 side experts described in clause (ii) to ad-
22 vise the Secretary with respect to each
23 such designation.

24 “(ii) ADVISORY PANEL ON SUPER-
25 VISION OF THERAPEUTIC HOSPITAL OUT-

1 PATIENT SERVICES.—For purposes of
2 clause (i), a panel of outside experts de-
3 scribed in this clause is a panel appointed
4 by the Secretary, based on nominations
5 submitted by hospital, rural health, and
6 medical organizations representing physi-
7 cians, non-physician practitioners, and hos-
8 pital administrators, as the case may be,
9 that meets the following requirements:

10 “(I) COMPOSITION.—The panel
11 shall be composed of at least 15 phy-
12 sicians and non-physician practi-
13 tioners who furnish therapeutic hos-
14 pital outpatient services for which
15 payment is made under this part and
16 who collectively represent the medical
17 specialties that furnish such services,
18 and of 4 hospital administrators of
19 hospitals located in rural areas (as de-
20 fined in section 1886(d)(2)(D)) or crit-
21 ical access hospitals.

22 “(II) PRACTICAL EXPERIENCE
23 REQUIRED FOR PHYSICIANS AND NON-
24 PHYSICIAN PRACTITIONERS.—During
25 the 12-month period preceding ap-

1 pointment to the panel by the Sec-
2 retary, each physician or non-physi-
3 cian practitioner described in sub-
4 clause (I) shall have furnished thera-
5 peutic hospital outpatient services for
6 which payment was made under this
7 part.

8 “(III) MINIMUM RURAL REP-
9 RESENTATION REQUIREMENT FOR
10 PHYSICIANS AND NON-PHYSICIAN
11 PRACTITIONERS.—Not less than 50
12 percent of the membership of the
13 panel that is comprised of physicians
14 and non-physician practitioners shall
15 be physicians or non-physician practi-
16 tioners described in subclause (I) who
17 practice in rural areas (as defined in
18 section 1886(d)(2)(D)) or who furnish
19 such services in critical access hos-
20 pitals.

21 “(iii) APPLICATION OF FACA.—The
22 Federal Advisory Committee Act (5 U.S.C.
23 2 App.), other than section 14 of such Act,
24 shall apply to the panel of outside experts

1 appointed by the Secretary under clause
2 (ii).

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

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 “(F) RULE OF CONSTRUCTION.—Nothing
14 in this subsection shall be construed as author-
15 izing the Secretary to apply or require any level
16 of supervision other than general or direct su-
17 pervision with respect to the furnishing of
18 therapeutic hospital outpatient services.

19 “(3) INITIAL LIST OF DESIGNATED SERVICES.—
20 The Secretary shall include in the proposed and final
21 regulation for payment for hospital outpatient serv-
22 ices for 2015 under this part a list of initial thera-
23 peutic hospital outpatient services, if any, designated
24 under the process established under paragraph

1 (2)(A) as requiring direct supervision under this
2 part.

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

6 “(A) IN GENERAL.—Subject to the suc-
7 ceeding provisions of this subsection, a non-phy-
8 sician practitioner may directly supervise the
9 furnishing of—

10 “(i) therapeutic hospital outpatient
11 services under this part, including cardiac
12 rehabilitation services (under section
13 1861(eee)(1)), intensive cardiac rehabilita-
14 tion services (under section 1861(eee)(4)),
15 and pulmonary rehabilitation services
16 (under section 1861(fff)(1)); and

17 “(ii) those hospital outpatient diag-
18 nostic services (described in section
19 1861(s)(2)(C)) that require direct super-
20 vision under the fee schedule established
21 under section 1848.

22 “(B) REQUIREMENTS.—Subparagraph (A)
23 shall apply insofar as the non-physician practi-
24 tioner involved meets the following require-
25 ments:

1 “(i) SCOPE OF PRACTICE.—The non-
2 physician practitioner is acting within the
3 scope of practice under State law applica-
4 ble to the practitioner.

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

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

9 “(A) THERAPEUTIC HOSPITAL OUT-
10 PATIENT SERVICES.—The term ‘therapeutic
11 hospital outpatient services’ means hospital
12 services described in section 1861(s)(2)(B) fur-
13 nished by a hospital or critical access hospital
14 and includes—

15 “(i) cardiac rehabilitation services and
16 intensive cardiac rehabilitation services (as
17 defined in paragraphs (1) and (4), respec-
18 tively, of section 1861(eee)); and

19 “(ii) pulmonary rehabilitation services
20 (as defined in section 1861(fff)(1)).

21 “(B) GENERAL SUPERVISION.—

22 “(i) OVERALL DIRECTION AND CON-
23 TROL OF PHYSICIAN.—Subject to clause
24 (ii), with respect to the furnishing of
25 therapeutic hospital outpatient services for

1 which payment may be made under this
2 part, the term ‘general supervision’ means
3 such services that are furnished under the
4 overall direction and control of a physician
5 or non-physician practitioner, as the case
6 may be.

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

12 “(C) DIRECT SUPERVISION.—

13 “(i) PROVISION OF ASSISTANCE AND
14 DIRECTION.—Subject to clause (ii), with
15 respect to the furnishing of therapeutic
16 hospital outpatient services for which pay-
17 ment may be made under this part, the
18 term ‘direct supervision’ means that a phy-
19 sician or non-physician practitioner, as the
20 case may be, is immediately available (in-
21 cluding by telephone or other means) to
22 furnish assistance and direction through-
23 out the furnishing of such services. Such
24 term includes, with respect to the fur-
25 nishing of a therapeutic hospital outpatient

1 service for which payment may be made
2 under this part, direct supervision during
3 the initiation of the service followed by
4 general supervision for the remainder of
5 the service (as described in paragraph
6 (2)(A)(ii)).

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

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

19 “(i) is a physician assistant, a nurse
20 practitioner, a clinical nurse specialist, a
21 clinical social worker, a clinical psycholo-
22 gist, a certified nurse midwife, or a cer-
23 tified registered nurse anesthetist, and in-
24 cludes such other practitioners as the Sec-
25 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 rulemaking 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 the later of Decem-
7 ber 31, 2014, or the date on which the final regula-
8 tion promulgated by the Secretary of Health and
9 Human Services to carry out this Act takes effect,
10 for which a claim for payment is made under part
11 B of title XVIII of the Social Security Act shall not
12 be subject to any civil or criminal action or penalty
13 under Federal law for failure to meet supervision re-
14 quirements under the regulation described in para-
15 graph (1), under program manuals, or otherwise.

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

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

24 (B) cardiac rehabilitation services or inten-
25 sive cardiac rehabilitation services (as defined

1 in paragraphs (1) and (4), respectively, of sub-
2 section (eee) of such section); or
3 (C) pulmonary rehabilitation services (as
4 defined in subsection (fff)(1) of such section).