

107TH CONGRESS  
2D SESSION

# S. 2386

To amend title XVIII of the Social Security Act to authorize physical therapists to diagnose, evaluate, and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 29, 2002

Mrs. LINCOLN (for herself and Mr. SPECTER) 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 to authorize physical therapists to diagnose, evaluate, and treat medicare beneficiaries without a requirement for a physician referral, 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 Patient Ac-  
5       cess to Physical Therapists Act of 2002”.

6       **SEC. 2. ACCESS TO OUTPATIENT PHYSICAL THERAPY SERV-**  
7                               **ICES FOR MEDICARE BENEFICIARIES.**

8       (a) IN GENERAL.—

1           (1) ELIMINATION OF REQUIRED PHYSICIAN RE-  
2 FERRAL.—

3           (A) DEFINITION OF OUTPATIENT PHYS-  
4 ICAL THERAPY SERVICES.—Section 1861(p) of  
5 the Social Security Act (42 U.S.C. 1395x(p)) is  
6 amended—

7           (i) in the matter preceding paragraph  
8 (1), by striking “as an outpatient”;

9           (ii) by amending paragraph (1) to  
10 read as follows:

11           “(1) who is an outpatient, and”;

12           (iii) in paragraph (2)—

13           (I) by striking “physician (as so  
14 defined) or by a qualified physical  
15 therapist” and inserting “physician  
16 (as defined in paragraph (1), (3), or  
17 (4) of subsection (r)) or by a qualified  
18 physical therapist (as defined in sec-  
19 tion 1861(w))”; and

20           (II) by inserting “or a qualified  
21 physical therapist (as so defined)”  
22 after “physician” the second place it  
23 appears;

1 (iv) in paragraph (4)(A)(ii), by strik-  
2 ing “one or more” and all that follows  
3 through “agency) and”; and

4 (v) in the fifth sentence, by striking  
5 “with respect to outpatients who are not  
6 entitled to benefits under this title” and  
7 inserting “or as authorizing the Secretary  
8 to require”.

9 (B) CONFORMING AMENDMENTS.—Section  
10 1835(a)(2) of the Social Security Act (42  
11 U.S.C. 1395n(a)(2)) is amended—

12 (i) in the matter preceding subpara-  
13 graph (A), by inserting “, or in the case of  
14 outpatient physical therapy services (as de-  
15 scribed in subparagraph (C)) and physical  
16 therapy services furnished as comprehen-  
17 sive outpatient rehabilitation facility serv-  
18 ices (described in subparagraph (E)), a  
19 qualified physical therapist,” after “a phy-  
20 sician”;

21 (ii) in subparagraph (C)—

22 (I) in the matter preceding clause  
23 (i), by striking “or outpatient occupa-  
24 tional therapy services”;

1 (II) in clause (i), by striking “or  
2 occupational therapy services, respec-  
3 tively,” and inserting “, and”;

4 (III) in clause (ii), by striking  
5 “or qualified occupational therapist,  
6 respectively,”; and

7 (IV) beginning in clause (ii), by  
8 striking “by a physician, and (iii)”  
9 and all that follows and inserting “by  
10 a physician or a qualified physical  
11 therapist;”;

12 (iii) in subparagraph (D)—

13 (I) in the matter preceding clause  
14 (i), by striking “outpatient speech pa-  
15 thology services” and inserting “out-  
16 patient occupational therapy services  
17 or outpatient speech-language pathol-  
18 ogy services”;

19 (II) in clause (i), by striking  
20 “needed speech pathology services”  
21 and inserting “needed occupational  
22 therapy services or speech-language  
23 pathology services, respectively”; and

24 (III) in clause (ii), by striking  
25 “speech pathologist” and inserting

1 “occupational therapist or speech-lan-  
2 guage pathologist, respectively,”; and  
3 (iv) in subparagraph (E)—

4 (I) in clause (ii), by inserting  
5 “(or, in the case of comprehensive  
6 outpatient rehabilitation facility serv-  
7 ices consisting of physical therapy  
8 services, by a qualified physical thera-  
9 pist)” after “physician”; and

10 (II) in clause (iii), by inserting  
11 “in the case of comprehensive out-  
12 patient rehabilitation facility services  
13 not consisting of physical therapy  
14 services,” before “such services”.

15 (2) DEFINITION OF QUALIFIED PHYSICAL  
16 THERAPIST.—Section 1861 of the Social Security  
17 Act (42 U.S.C. 1395x) is amended by adding at the  
18 end the following new subsection:

19 “Qualified Physical Therapist

20 “(ww) The term ‘qualified physical therapist’ means  
21 an individual who is licensed as a physical therapist by  
22 the State in which such individual is practicing and who  
23 meets the applicable education and training requirements  
24 under paragraph (1) or (2):

1           “(1) With respect to years beginning with 2003,  
2           except as provided in paragraph (2), the individual  
3           has received a master’s or doctoral degree from a  
4           professional physical therapy education program  
5           that has been accredited by a national accreditation  
6           agency recognized by the Secretary of Education.

7           “(2) The requirement of paragraph (1) shall  
8           not apply to an individual who, before 2003, meets  
9           one of the following requirements:

10                   “(A) The individual has graduated from a  
11                   physical therapy curriculum approved by the  
12                   American Physical Therapy Association or the  
13                   Council on Medical Education and Hospitals of  
14                   the American Medical Association, or both.

15                   “(B) Before 1966, the individual—

16                           “(i) was admitted to membership by  
17                           the American Physical Therapy Associa-  
18                           tion;

19                           “(ii) was admitted to registration by  
20                           the American Registry of Physical Thera-  
21                           pist; or

22                           “(iii) graduated from a physical ther-  
23                           apy curriculum in a 4-year college or uni-  
24                           versity approved by a State department of  
25                           education.

1           “(C) The individual has 2 years of appro-  
2           priate experience as determined by the Sec-  
3           retary as a physical therapist and, in the case  
4           of such an individual who was initially licensed  
5           by a State as a physical therapist before De-  
6           cember 31, 1977, or seeking qualification as a  
7           physical therapist before such date, has  
8           achieved a satisfactory grade on a proficiency  
9           examination approved by the Secretary.

10           “(D) The individual—

11                   “(i) was licensed or registered as a  
12                   physical therapist before January 1, 1966;  
13                   and

14                   “(ii) had 15 years of full-time experi-  
15                   ence in the treatment of illness or injury  
16                   through the practice of physical therapy in  
17                   which services were rendered under the  
18                   order and direction of an attending or re-  
19                   ferring physician (as defined in subsection  
20                   (r)(1)) before January 1, 1970.

21           “(E) In the case of an individual trained  
22           outside of the United States, the individual—

23                   “(i) has graduated before January 1,  
24                   2003, from a physical therapy curriculum  
25                   approved by the country in which the cur-

1           riculum was located and in which there is  
2           a member organization of the World Con-  
3           ference for Physical Therapy;

4           “(ii) meets the requirements for mem-  
5           bership in a member organization of the  
6           World Conference for Physical Therapy;

7           “(iii) has 1 year of experience under  
8           the supervision of an active member of the  
9           American Physical Therapy Association;  
10          and

11          “(iv) has successfully completed an  
12          examination prescribed by the American  
13          Physical Therapy Association.”.

14          (b) PRESERVING EXISTING LAW FOR OUTPATIENT  
15          OCCUPATIONAL THERAPY SERVICES.—

16                 (1) DEFINITION.—Section 1861(g) of the Social  
17          Security Act (42 U.S.C. 1395x(g)) is amended to  
18          read as follows:

19                 “Outpatient Occupational Therapy Services

20                 “(g) The term ‘outpatient occupational therapy serv-  
21          ices’ means occupational therapy services furnished by a  
22          provider of services, a clinic, a rehabilitation agency, or  
23          a public health agency, or by others under an arrangement  
24          with, and under the supervision of, such a provider, clinic,



1 rehabilitation agency, or public health agency to an indi-  
2 vidual as an outpatient—

3 “(1) who is under the care of a physician (as  
4 defined in paragraph (1), (3), or (4) of subsection  
5 (r));

6 “(2) with respect to whom a plan prescribing  
7 the type, amount, and duration of occupational ther-  
8 apy services that are furnished to such individual  
9 has been established by a physician (as so defined)  
10 or by an occupational therapist and is periodically  
11 reviewed by a physician (as so defined);

12 excluding, however—

13 “(3) any item or service if it would not be in-  
14 cluded under subsection (b) if furnished to an inpa-  
15 tient of a hospital; and

16 “(4) any such service—

17 “(A) if furnished by a clinic, rehabilitation  
18 agency, or by others under arrangements with  
19 such clinic or agency, unless such clinic or reha-  
20 bilitation agency—

21 “(i) provides an adequate program of  
22 occupational therapy services for out-  
23 patients and has the facilities and per-  
24 sonnel required for such program or re-  
25 quired for the supervision of such a pro-

1           gram, in accordance with such require-  
2           ments as the Secretary may specify;

3           “(ii) has policies, established by a  
4           group of professional personnel, including  
5           one or more occupational therapists, to  
6           govern the services (referred to in clause  
7           (i)) it provides;

8           “(iii) maintains clinical records on all  
9           patients;

10          “(iv) if such clinic or agency is situ-  
11          ated in a State in which State or applica-  
12          ble local law provides for the licensing of  
13          institutions of this nature—

14                 “(I) is licensed pursuant to such  
15                 law, or

16                 “(II) is approved by the agency  
17                 of such State or locality responsible  
18                 for licensing institutions of this na-  
19                 ture, as meeting the standards estab-  
20                 lished for such licensing; and

21          “(v) meets such other conditions relat-  
22          ing to the health and safety of individuals  
23          who are furnished services by such clinic or  
24          agency on an outpatient basis, as the Sec-  
25          retary may find necessary, and provides

1 the Secretary on a continuing basis with  
2 a surety bond that is not less than  
3 \$50,000; or

4 “(B) if furnished by a public health agen-  
5 cy, unless such agency meets such other condi-  
6 tions relating to the safety of individuals who  
7 are furnished services by such agency on an  
8 outpatient basis, as the Secretary may find nec-  
9 essary.

10 The term ‘outpatient occupational therapy services’ also  
11 includes occupational therapy services furnished an indi-  
12 vidual by an occupational therapist (in the office of the  
13 occupational therapist or in such individual’s home) who  
14 meets licensing and other standards prescribed by the Sec-  
15 retary in regulations, otherwise than under an arrange-  
16 ment with and under the supervision of a provider of serv-  
17 ices, clinic, rehabilitation agency, or public health agency,  
18 if the furnishing of such services meets such conditions  
19 relating to health and safety as the Secretary may find  
20 necessary. In addition, such term includes occupational  
21 therapy services that meet the requirements of the first  
22 sentence of this subsection except that they are furnished  
23 to an inpatient of a hospital or extended care facility.  
24 Nothing in this subsection shall be construed as requiring,  
25 with respect to outpatients who are not entitled to benefits

1 under this title, an occupational therapist to provide out-  
2 patient occupational therapy services only to outpatients  
3 who are under the care of a physician or pursuant to a  
4 plan of care established by a physician. The Secretary may  
5 waive the requirement of a surety bond under paragraph  
6 (4)(A)(v) in the case of a clinic or agency that provides  
7 a comparable surety bond under State law.”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) SCOPE OF BENEFITS.—Section  
10 1832(a)(2)(C) of the Social Security Act (42  
11 U.S.C. 1395k(a)(2)(C)) is amended by striking  
12 “such sentence applies through the operation of  
13 section 1861(g)” and inserting “the second  
14 sentence of section 1861(g) applies”.

15 (B) PAYMENT OF BENEFITS.—Section  
16 1833(g)(3) of the Social Security Act (42  
17 U.S.C. 1395l(g)(3)) is amended by striking  
18 “section 1861(p)” and all that follows through  
19 “section 1861(g)” and inserting “section  
20 1861(g) (but not described in subsection  
21 (a)(8)(B))”.

22 (C) PROVIDER CLAIMS PROCEDURES.—The  
23 second sentence of section 1835(a) of the Social  
24 Security Act (42 U.S.C. 1395n(a)) is  
25 amended—

1 (i) by striking “section 1861(p)(4)(A)  
2 (or meets the requirements of such section  
3 through the operation of section 1861(g))”  
4 and inserting “section 1861(p)(4)(A) or  
5 section 1861(g)(4)(A)”;

6 (ii) by striking “section 1861(p)(4)(B)  
7 (or meets the requirements of such section  
8 through the operation of section 1861(g))”  
9 and inserting “section 1861(p)(4)(B) or  
10 section 1861(g)(4)(B)”; and

11 (iii) by striking “(as therein defined)  
12 or (through the operation of section  
13 1861(g)) with respect to the furnishing of  
14 outpatient occupational therapy services”  
15 and inserting “(as defined in section  
16 1861(p)) or outpatient occupational ther-  
17 apy services (as defined in section  
18 1861(g)), respectively”.

19 (D) AGREEMENTS WITH PROVIDERS.—Sec-  
20 tion 1866(e)(1) of the Social Security Act (42  
21 U.S.C. 1395cc(e)(1)) is amended—

22 (i) by striking “section 1861(p)(4)(A)  
23 (or meets the requirements of such section  
24 through the operation of section 1861(g))”

1 and inserting “section 1861(p)(4)(A) or  
2 section 1861(g)(4)(A)”;

3 (ii) by striking “section 1861(p)(4)(B)  
4 (or meets the requirements of such section  
5 through the operation of section 1861(g))”  
6 and inserting “section 1861(p)(4)(B) or  
7 section 1861(g)(4)(B)”;

8 (iii) by striking “(as therein defined)  
9 or (through the operation of section  
10 1861(g)) with respect to the furnishing of  
11 outpatient occupational therapy services”  
12 and inserting “(as defined in section  
13 1861(p)) or outpatient occupational ther-  
14 apy services (as defined in section  
15 1861(g)), respectively”.

16 (c) SEPARATE STATUTORY TREATMENT FOR OUT-  
17 PATIENT PHYSICAL THERAPY SERVICES AND OUT-  
18 PATIENT SPEECH-LANGUAGE PATHOLOGY SERVICES.—

19 (1) SCOPE OF BENEFITS.—Section  
20 1832(a)(2)(C) of the Social Security Act (42 U.S.C.  
21 1395k(a)(2)(C)), as amended by subsection  
22 (b)(2)(A), is amended—

23 (A) by striking “and outpatient” and in-  
24 serting “, outpatient”; and

1 (B) by inserting before the semicolon the  
2 following: “, and outpatient speech-language pa-  
3 thology services”.

4 (2) PAYMENT OF BENEFITS.—Section 1833 of  
5 the Social Security Act (42 U.S.C. 1395l) is  
6 amended—

7 (A) in subparagraphs (A) and (B) of sub-  
8 section (a)(8), by striking “services, (which in-  
9 cludes outpatient speech-language pathology  
10 services) and outpatient occupational therapy  
11 services” each place it appears and inserting  
12 “services, outpatient occupational therapy serv-  
13 ices, and outpatient speech-language pathology  
14 services”; and

15 (B) in subsection (g)—

16 (i) in paragraphs (1) and (3), by  
17 striking “paragraph (4)” each place it ap-  
18 pears and inserting “paragraph (5)”; and

19 (ii) by redesignating paragraph (4) as  
20 paragraph (5) and inserting after para-  
21 graph (3) the following new paragraph:

22 “(4) Subject to paragraph (5), in the case of  
23 speech-language pathology services (of the type de-  
24 scribed in section 1861(l)(4) (but not described in  
25 subsection (a)(8)(B)) and speech-language pathology

1 services of such type that are furnished by a physi-  
2 cian or as incident to physicians' services), with re-  
3 spect to expenses incurred in any calendar year, no  
4 more than the amount specified in paragraph (2) for  
5 the year shall be considered as incurred expenses for  
6 purposes of subsections (a) and (b).”.

7 (3) PROVIDER CLAIMS PROCEDURES.—The sec-  
8 ond sentence of section 1835(a) of the Social Secu-  
9 rity Act (42 U.S.C. 1395n(a)), as amended by sub-  
10 section (b)(2)(C), is amended—

11 (A) by striking “or section 1861(g)(4)(A)”  
12 and inserting “, section 1861(g)(4)(A), or sec-  
13 tion 1861(ll)(5)(A)”;

14 (B) by striking “or section 1861(g)(4)(B)”  
15 and inserting “, section 1861(g)(4)(B), or sec-  
16 tion 1861(ll)(4)(B)(ii)(II)”;

17 (C) by striking “or outpatient occupational  
18 services (as defined in section 1861(g))” and  
19 inserting “, outpatient occupational services (as  
20 defined in section 1861(g)), or outpatient  
21 speech-language pathology services (as defined  
22 in section 1861(ll)(4)(A))”.

23 (4) AGREEMENTS WITH PROVIDERS.—Section  
24 1866(e)(1) of the Social Security Act (42 U.S.C.



1 1395cc(e)(1)), as amended by subsection (b)(2)(D),  
2 is amended—

3 (A) by striking “or section 1861(g)(4)(A)”  
4 and inserting “1861(g)(4)(A), or section  
5 1861(ll)(5)(A)”;

6 (B) by striking “or section 1861(g)(4)(B)”  
7 and inserting “, section 1861(g)(4)(B), or sec-  
8 tion 1861(ll)(4)(B)(ii)(II)”;

9 (C) by striking “or outpatient occupational  
10 services (as defined in section 1861(g))” and  
11 inserting “, outpatient occupational services (as  
12 defined in section 1861(g)), or outpatient  
13 speech-language pathology services (as defined  
14 in section 1861(ll)(4)(A))”.

15 (5) DEFINITIONS.—Section 1861 of the Social  
16 Security Act (42 U.S.C. 1395x) is amended—

17 (A) in subsection (p), by striking the  
18 fourth sentence;

19 (B) in subsection (s)(2)(D), by striking  
20 “services and outpatient occupational therapy  
21 services” and inserting “services, outpatient oc-  
22 cupational therapy services, and outpatient  
23 speech-language pathology services”; and

24 (C) in subsection (ll), by adding at the end  
25 the following new paragraphs:

1       “(4)(A) Subject to subparagraph (B), the term ‘out-  
2 patient speech-language pathology services’ means speech-  
3 language pathology services that are furnished by a pro-  
4 vider of services, a clinic, a rehabilitation agency, or a pub-  
5 lic health agency, or by others under an arrangement with,  
6 and under the supervision of, such provider, clinic, reha-  
7 bilitation agency, or public health agency to an individual  
8 as an outpatient—

9           “(i) who is under the care of a physician (as de-  
10 fined in paragraph (1), (3), or (4) of subsection (r));  
11 and

12           “(ii) with respect to whom a plan prescribing  
13 the type, amount, and duration of speech-language  
14 pathology services that are furnished to such indi-  
15 vidual has been established by a physician (as so de-  
16 fined) or by a qualified speech-language pathologist  
17 and is periodically reviewed by a physician (as so de-  
18 fined).

19       “(B) Such term does not include—

20           “(i) any item or service if it would not be in-  
21 cluded under subsection (b) if furnished to an inpa-  
22 tient of a hospital; or

23           “(ii) any item or service—

24           “(I) if furnished by a clinic, rehabilitation  
25 agency, or by others under arrangements with

1 such clinic or agency, unless such clinic or reha-  
2 bilitation agency meets the requirements of  
3 paragraph (5); and

4 “(II) if furnished by a public health agen-  
5 cy, unless such agency meets such other condi-  
6 tions relating to the safety of individuals who  
7 are furnished services by such agency on an  
8 outpatient basis, as the Secretary may find nec-  
9 essary.

10 “(C) Such term also includes speech-language pathol-  
11 ogy services that meet the requirements of the preceding  
12 sentence except that they are furnished to an inpatient  
13 of a hospital or extended care facility. Nothing in this sub-  
14 section shall be construed as requiring, with respect to  
15 outpatients who are not entitled to benefits under this  
16 title, a speech-language pathologist to provide outpatient  
17 speech-language pathology services only to outpatients  
18 who are under the care of a physician or pursuant to a  
19 plan of care established by a physician. The Secretary may  
20 waive the requirement of a surety bond under paragraph  
21 (5)(E) in the case of a clinic or agency that provides a  
22 comparable surety bond under State law.

23 “(5) A clinic or rehabilitation agency meets the re-  
24 quirements of this paragraph if it—

1           “(A) provides an adequate program of speech-  
2 language pathology services for outpatients and has  
3 the facilities and personnel required for such pro-  
4 gram or required for the supervision of such a pro-  
5 gram, in accordance with such requirements as the  
6 Secretary may specify;

7           “(B) has policies, established by a group of pro-  
8 fessional personnel, including one or more speech-  
9 language pathologists, to govern the services (re-  
10 ferred to in subparagraph (A)) it provides;

11           “(C) maintains clinical records on all patients;

12           “(D) in the case of a clinic or agency that is  
13 situated in a State in which State or applicable local  
14 law provides for the licensing of institutions of this  
15 nature—

16           “(i) is licensed pursuant to such law, or

17           “(ii) is approved by the agency of such  
18 State or locality responsible for licensing insti-  
19 tutions of this nature, as meeting the standards  
20 established for such licensing; and

21           “(E) meets such other conditions relating to the  
22 health and safety of individuals who are furnished  
23 services by such clinic or agency on an outpatient  
24 basis, as the Secretary may find necessary, and pro-

1       vides the Secretary on a continuing basis with a sur-  
2       ety bond that is not less than \$50,000.”.

3       (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to items and services furnished on  
5 or after January 1, 2002.

○