

112TH CONGRESS  
1ST SESSION

# S. 778

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

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IN THE SENATE OF THE UNITED STATES

APRIL 8, 2011

Mr. MORAN 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.

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”.

6 **SEC. 2. REQUIREMENTS FOR PHYSICIAN SUPERVISION OF**  
7 **THERAPEUTIC HOSPITAL OUTPATIENT SERV-**  
8 **ICES.**

9 (a) THERAPEUTIC HOSPITAL OUTPATIENT SERV-  
10 ICES.—

1           (1) SUPERVISION REQUIREMENTS.—Section  
 2           1833 of the Social Security Act (42 U.S.C. 1395l)  
 3           is amended by adding at the end the following new  
 4           subsection:

5           “(z) PHYSICIAN SUPERVISION REQUIREMENTS FOR  
 6 THERAPEUTIC HOSPITAL OUTPATIENT SERVICES.—

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

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

21           “(A) IN GENERAL.—Subject to the suc-  
 22 ceeding provisions of this paragraph, the Sec-  
 23 retary shall establish a process for the designa-  
 24 tion of therapeutic hospital outpatient services

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

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

5 “(ii) direct supervision during the ini-  
6 tiation of the service followed by general  
7 supervision for the remainder of the serv-  
8 ice.

9 “(B) CONSULTATION WITH CLINICAL EX-  
10 PERTS.—

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

20 “(ii) ADVISORY PANEL ON SUPER-  
21 VISION OF THERAPEUTIC HOSPITAL OUT-  
22 PATIENT SERVICES COMPRISED OF PHYSI-  
23 CIANS AND NON-PHYSICIAN PRACTI-  
24 TIONERS SERVING RURAL AND OTHER  
25 AREAS.—For purposes of clause (i), a

1 panel of outside experts described in this  
2 clause is a panel appointed by the Sec-  
3 retary, based on nominations submitted by  
4 hospital, rural health, and medical organi-  
5 zations representing physicians or non-physi-  
6 cian practitioners, as the case may be,  
7 that meets the following requirements:

8 “(I) COMPOSITION.—The panel  
9 shall be composed of at least 15 phy-  
10 sicians and non-physician practi-  
11 tioners who furnish therapeutic hos-  
12 pital outpatient services for which  
13 payment is made under this part and  
14 who collectively represent the medical  
15 specialties that furnish such services.

16 “(II) PRACTICAL EXPERIENCE.—  
17 During the 12-month period preceding  
18 appointment to the panel by the Sec-  
19 retary, each physician or non-physi-  
20 cian practitioner described in sub-  
21 clause (I) shall have furnished thera-  
22 peutic hospital outpatient services for  
23 which payment was made under this  
24 part.

1                   “(III) MINIMUM RURAL REP-  
2                   RESENTATION REQUIREMENT.—Not  
3                   less than 50 percent of the member-  
4                   ship of the panel shall be physicians  
5                   or non-physician practitioners de-  
6                   scribed in subclause (I) who practice  
7                   in rural areas (as defined in section  
8                   1886(d)(2)(D)) or who furnish such  
9                   services in critical access hospitals.

10                   “(iii) APPLICATION OF FACA.—The  
11                   Federal Advisory Committee Act (5 U.S.C.  
12                   2 App.), other than section 14 of such Act,  
13                   shall apply to the panel of outside experts  
14                   appointed by the Secretary under clause  
15                   (ii).

16                   “(C) SPECIAL RULE FOR OUTPATIENT  
17                   CRITICAL ACCESS HOSPITAL SERVICES.—Inso-  
18                   far as a therapeutic outpatient hospital service  
19                   that is an outpatient critical access hospital  
20                   service is designated as requiring direct super-  
21                   vision under the process established under sub-  
22                   paragraph (A), the Secretary shall deem the  
23                   critical access hospital furnishing that service  
24                   as having met the requirement for direct super-  
25                   vision for that service if, when furnishing such

1 service, the critical access hospital meets the  
2 standard for personnel required as a condition  
3 of participation under section 485.618(d) of  
4 title 42, Code of Federal Regulations (as in ef-  
5 fect on the date of the enactment of this sub-  
6 section).

7 “(D) CONSIDERATION OF COMPLIANCE  
8 BURDENS.—Under the process established  
9 under subparagraph (A), the Secretary shall  
10 take into account the impact on hospitals and  
11 critical access hospitals in complying with re-  
12 quirements for direct supervision in the fur-  
13 nishing of therapeutic hospital outpatient serv-  
14 ices, including hospital resources, availability of  
15 hospital-privileged physicians, specialty physi-  
16 cians, and non-physician practitioners, and ad-  
17 ministrative burdens.

18 “(E) REQUIREMENT FOR NOTICE AND  
19 COMMENT RULEMAKING.—Under the process  
20 established under subparagraph (A), the Sec-  
21 retary shall only designate therapeutic hospital  
22 outpatient services requiring direct supervision  
23 under this part through proposed and final  
24 rulemaking that provides for public notice and  
25 opportunity for comment.

1           “(F) RULE OF CONSTRUCTION.—Nothing  
 2           in this subsection shall be construed as author-  
 3           izing the Secretary to apply or require any level  
 4           of supervision other than general or direct su-  
 5           pervision with respect to the furnishing of  
 6           therapeutic hospital outpatient services.

7           “(3) INITIAL LIST OF DESIGNATED SERVICES.—  
 8           The Secretary shall include in the proposed and final  
 9           regulation for payment for hospital outpatient serv-  
 10          ices for 2012 under this part a list of initial thera-  
 11          peutic hospital outpatient services, if any, designated  
 12          under the process established under paragraph  
 13          (2)(A) as requiring direct supervision under this  
 14          part.

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

18                 “(A) IN GENERAL.—Subject to the suc-  
 19                 ceeding provisions of this subsection, a non-phy-  
 20                 sician practitioner may directly supervise the  
 21                 furnishing of—

22                         “(i) therapeutic hospital outpatient  
 23                         services under this part, including cardiac  
 24                         rehabilitation services (under section  
 25                         1861(eee)(1)), intensive cardiac rehabilita-

1           tion services (under section 1861(eee)(4)),  
2           and pulmonary rehabilitation services  
3           (under section 1861(fff)(1)); and

4           “(ii) those hospital outpatient diag-  
5           nostic services (described in section  
6           1861(s)(2)(C)) that require direct super-  
7           vision under the fee schedule established  
8           under section 1848.

9           “(B) REQUIREMENTS.—Subparagraph (A)  
10          shall apply insofar as the non-physician practi-  
11          tioner involved meets the following require-  
12          ments:

13           “(i) SCOPE OF PRACTICE.—The non-  
14           physician practitioner is acting within the  
15           scope of practice under State law applica-  
16           ble to the practitioner.

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

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

21           “(A) THERAPEUTIC HOSPITAL OUT-  
22           PATIENT SERVICES.—The term ‘therapeutic  
23           hospital outpatient services’ means hospital  
24           services described in section 1861(s)(2)(B) fur-



1 nished by a hospital or critical access hospital  
2 and includes—

3 “(i) cardiac rehabilitation services and  
4 intensive cardiac rehabilitation services (as  
5 defined in paragraphs (1) and (4), respec-  
6 tively, of section 1861(eee)); and

7 “(ii) pulmonary rehabilitation services  
8 (as defined in section 1861(fff)(1)).

9 “(B) GENERAL SUPERVISION.—

10 “(i) OVERALL DIRECTION AND CON-  
11 TROL OF PHYSICIAN.—Subject to clause  
12 (ii), with respect to the furnishing of  
13 therapeutic hospital outpatient services for  
14 which payment may be made under this  
15 part, the term ‘general supervision’ means  
16 such services that are furnished under the  
17 overall direction and control of a physician  
18 or non-physician practitioner, as the case  
19 may be.

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

25 “(C) DIRECT SUPERVISION.—

1           “(i) PROVISION OF ASSISTANCE AND  
2           DIRECTION.—Subject to clause (ii), with  
3           respect to the furnishing of therapeutic  
4           hospital outpatient services for which pay-  
5           ment may be made under this part, the  
6           term ‘direct supervision’ means that a phy-  
7           sician or non-physician practitioner, as the  
8           case may be, is immediately available (in-  
9           cluding by telephone or other means) to  
10          furnish assistance and direction through-  
11          out the furnishing of such services, wheth-  
12          er such services are furnished in the hos-  
13          pital, in an on-campus department of the  
14          hospital, or an off-campus provider-based  
15          department of the hospital. Such term in-  
16          cludes, with respect to the furnishing of a  
17          therapeutic hospital outpatient service for  
18          which payment may be made under this  
19          part, direct supervision during the initi-  
20          ation of the service followed by general su-  
21          pervision for the remainder of the service  
22          (as described in paragraph (2)(A)(ii)).

23          “(ii) PRESENCE IN ROOM NOT RE-  
24          QUIRED.—For purposes of clause (i), a  
25          physician or non-physician practitioner, as

1           the case may be, is not required to be  
 2           present in the room during the perform-  
 3           ance of the procedure involved.

4           “(D) NON-PHYSICIAN PRACTITIONER DE-  
 5           FINED.—The term ‘non-physician practitioner’  
 6           means an individual who—

7                   “(i) is a physician assistant, a nurse  
 8                   practitioner, a clinical nurse specialist, a  
 9                   clinical social worker, a clinical psycholo-  
 10                  gist, a certified nurse midwife, or a cer-  
 11                  tified registered nurse anesthetist, and in-  
 12                  cludes such other practitioners as the Sec-  
 13                  retary may specify; and

14                   “(ii) with respect to the furnishing of  
 15                   therapeutic outpatient hospital services,  
 16                   meets the requirements of paragraph  
 17                   (4)(B).”.

18           (2) CONFORMING AMENDMENT.—Section  
 19           1861(eee)(2)(B) of the Social Security Act (42  
 20           U.S.C. 1395x(eee)(2)(B)) is amended by inserting “,  
 21           and a non-physician practitioner (as defined in sec-  
 22           tion 1833(z)(5)(D)) may supervise the furnishing of  
 23           such items and services in the hospital” after “in  
 24           the case of items and services furnished under such

1 a program in a hospital, such availability shall be  
2 presumed”.

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

5 (1) REPEAL OF REGULATORY CLARIFICA-  
6 TION.—The restatement and clarification under the  
7 final rulemaking changes to the Medicare hospital  
8 outpatient prospective payment system and calendar  
9 year 2009 payment rates (published in the Federal  
10 Register on November 18, 2008, 73 Fed. Reg.  
11 68702 through 68704) with respect to requirements  
12 for direct supervision by physicians for therapeutic  
13 hospital outpatient services (as defined in paragraph  
14 (3)) for purposes of payment for such services under  
15 the Medicare program shall have no force or effect  
16 in law.

17 (2) HOLD HARMLESS.—A hospital or critical  
18 access hospital that furnishes therapeutic hospital  
19 outpatient services during the period beginning on  
20 January 1, 2001, and ending on the later of Decem-  
21 ber 31, 2012, or the date on which the final regula-  
22 tion promulgated by the Secretary of Health and  
23 Human Services to carry out this Act takes effect,  
24 for which a claim for payment is made under part  
25 B of title XVIII of the Social Security Act shall not

1 be subject to any civil or criminal action or penalty  
2 under Federal law for failure to meet supervision re-  
3 quirements under the regulation described in para-  
4 graph (1), under program manuals, or otherwise.

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

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

13 (B) cardiac rehabilitation services or inten-  
14 sive cardiac rehabilitation services (as defined  
15 in paragraphs (1) and (4), respectively, of sub-  
16 section (eee) of such section); or

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

○