

118TH CONGRESS
2D SESSION

S. 3977

To amend title XVIII of the Social Security Act to protect beneficiaries with limb loss and other orthopedic conditions by providing access to appropriate, safe, effective, patient-centered orthotic and prosthetic care; to reduce fraud, waste, and abuse with respect to orthotics and prosthetics, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2024

Mr. WARNER (for himself, Mr. DAINES, Ms. KLOBUCHAR, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to protect beneficiaries with limb loss and other orthopedic conditions by providing access to appropriate, safe, effective, patient-centered orthotic and prosthetic care; to reduce fraud, waste, and abuse with respect to orthotics and prosthetics, 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 Orthotics and
5 Prosthetics Patient-Centered Care Act”.

1 **SEC. 2. INCREASING PROTECTIONS FOR MEDICARE BENE-**
 2 **FICIARIES RECEIVING ORTHOTIC AND PROS-**
 3 **THETIC CARE.**

4 (a) PROHIBITION ON PAYMENT FOR ITEMS DELIV-
 5 ERED BY DROP SHIPMENT.—

6 (1) IN GENERAL.—Section 1834(h)(1) of the
 7 Social Security Act (42 U.S.C. 1395m(h)(1)) is
 8 amended by adding at the end the following new
 9 subparagraph:

10 “(I) PROHIBITION ON PAYMENT FOR CER-
 11 TAIN ITEMS FURNISHED USING A DROP SHIP-
 12 MENT.—

13 “(i) IN GENERAL.—No payment shall
 14 be made under this subsection for an item
 15 described in clause (ii) furnished to an in-
 16 dividual via a drop shipment.

17 “(ii) ITEMS DESCRIBED.—This items
 18 described in this clause are the following:

19 “(I) A prosthesis (as defined in
 20 paragraph (4)(C)), except that such
 21 term does not include supplies for
 22 such prosthesis.

23 “(II) A custom-fabricated ortho-
 24 sis (as described in subparagraph
 25 (F)(ii)), or a custom-fitted orthosis,

1 except that such term does not in-
2 clude supplies for such orthosis.

3 “(III) Off-the-shelf orthotics (as
4 defined in section 1847(a)(2)(C)) that
5 are not otherwise subject to competi-
6 tive bidding and are delivered by drop
7 shipment.

8 “(iii) DROP SHIPMENT DEFINED.—In
9 this subparagraph, the term ‘drop ship-
10 ment’ means the direct shipment of a pros-
11 thesis or an orthosis to an individual that
12 has not received training or education with
13 respect to fitting and adjustment or train-
14 ing in the care and use of such prosthesis
15 or orthosis from a qualified practitioner
16 (as described in subparagraph (F)(iii)).”.

17 (2) EFFECTIVE DATE.—The amendment made
18 by paragraph (1) shall apply to items furnished on
19 or after the first day of the first full calendar year
20 following the date of enactment of this Act.

21 (b) ADDITIONAL PRACTITIONERS EXEMPT FROM
22 COMPETITIVE ACQUISITION.—Section 1847(a)(7)(A)(i) of
23 the Social Security Act (42 U.S.C. 1395w–3(a)(7)(A)(i))
24 is amended—

1 (1) by inserting “, physical therapist, occupa-
 2 tional therapist, orthotist, prosthetist” after “by a
 3 physician”; and

4 (2) by inserting “, physical therapist, occupa-
 5 tional therapist, orthotist, prosthetist” after “the
 6 physician’s” in each place such term occurs.

7 (c) ENSURING BENEFICIARY ACCESS TO REPLACE-
 8 MENT CUSTOM-FITTED ORTHOTIC DEVICES AND CUS-
 9 TOM-FABRICATED ORTHOTIC DEVICES.—Section
 10 1834(h)(1)(G) of the Social Security Act (42 U.S.C.
 11 1395m(h)(1)(G)) is amended—

12 (1) in the heading, by inserting “, CUSTOM-
 13 FITTED ORTHOTIC DEVICES, CUSTOM-FABRICATED
 14 ORTHOTIC DEVICES,” after “REPLACEMENT OF
 15 PROSTHETIC DEVICES”; and

16 (2) in clause (i), by inserting “, replacement of
 17 custom-fitted orthotic devices, replacement of cus-
 18 tom-fabricated orthotic devices,” after “which are
 19 artificial limbs,”.

20 (d) UPDATING DEFINITIONS OF ORTHOTICS AND
 21 PROSTHETICS.—Section 1834(h)(4)(C) of the Social Se-
 22 curity Act (42 U.S.C. 1395m(h)(4)(C)) is amended by
 23 striking “the term ‘orthotics and prosthetics’ has the
 24 meaning given such term”, and inserting “the terms

1 ‘orthotics and prosthetics’ and ‘orthoses and prostheses’
2 have the meaning given such terms”.

3 (e) REGULATIONS.—Not later than 1 year after the
4 date of the enactment of this Act, the Secretary of Health
5 and Human Services shall promulgate final regulations to
6 implement the amendments made by this Act.

