

115TH CONGRESS
1ST SESSION

H. R. 626

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 (1) Intensive, coordinated medical rehabilitation
2 provided in inpatient rehabilitation hospitals and
3 units is critical to Medicare beneficiaries with inju-
4 ries, illnesses, disabilities, and chronic conditions in
5 order to return to health, full function, independent
6 living, and a high quality of life.

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

19 (3) Before 2010, CMS regulations explicitly
20 stated that physical therapy, occupational therapy,
21 speech therapy, and/or orthotics and prosthetics
22 were counted toward the Three Hour Rule on an as-
23 needed basis. In addition, CMS regulations stated
24 that “other therapeutic modalities” that were deter-
25 mined by the physician and the rehabilitation team

1 to be needed by the patient “on a priority basis”
2 would qualify toward satisfaction of the rule (HCFA
3 Ruling 85–2).

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

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

21 (6) Recreational therapy is a treatment service
22 designed to restore, remediate, and rehabilitate a pa-
23 tient’s level of functioning and independence in life
24 activities, to promote health and wellness as well as
25 to reduce or eliminate the activity limitations and re-

1 strictions to participation in life situations caused by
2 an illness or disabling condition. Recreational ther-
3 apy in the inpatient rehabilitation hospital and unit
4 setting is provided by qualified recreational thera-
5 pists when required by the patient's condition and
6 prescribed by a physician as part of a patient's plan
7 of care.

8 (b) PURPOSE.—It is the purpose of this Act to re-
9 store reliance on the professional judgment of the treating
10 physician and the rehabilitation team when determining
11 whether a Medicare patient meets the intensity of therapy
12 requirement of an inpatient rehabilitation hospital or unit
13 in order for that patient to gain access to the appropriate
14 mix of medically necessary therapeutic rehabilitation serv-
15 ices in that setting, including physical therapy, occupa-
16 tional therapy, and, as needed, speech therapy, orthotics
17 and prosthetics, and recreational therapy.

1 **SEC. 3. INCLUDING RECREATIONAL THERAPY AMONG THE**
2 **THERAPY MODALITIES THAT CONSTITUTE AN**
3 **INTENSIVE REHABILITATION THERAPY PRO-**
4 **GRAM IN DETERMINING THE MEDICAL NE-**
5 **CESSITY OF SERVICES IN AN INPATIENT RE-**
6 **HABILITATION FACILITY (IRF).**

7 (a) IN GENERAL.—Section 1886(j) of the Social Se-
8 curity Act (42 U.S.C. 1395ww(j)) is amended by adding
9 at the end the following new paragraph:

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

20 (b) EFFECTIVE DATE.—The amendment made by
21 section (a) shall apply to services furnished on or after
22 January 1, 2018.

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