

## Calendar No. 188

114TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 114-109

---

---

A BILL TO PROVIDE FOR THE EXTENSION OF THE ENFORCEMENT INSTRUCTION ON SUPERVISION REQUIREMENTS FOR OUTPATIENT THERAPEUTIC SERVICES IN CRITICAL ACCESS AND SMALL RURAL HOSPITALS THROUGH 2015

\_\_\_\_\_  
JULY 30, 2015.—Ordered to be printed  
\_\_\_\_\_

Mr. HATCH, from the Committee on Finance,  
submitted the following

### R E P O R T

[To accompany S. 1461]

The Committee on Finance, to which was referred the bill (S. 1461) to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2015, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

#### I. LEGISLATIVE BACKGROUND

The Committee on Finance, to which was referred (S. 1461), to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2015, reports favorably thereon with an amendment and recommends the bill, as amended, do pass.

##### *Background and need for legislative action*

In the calendar year (CY) 2009 Medicare hospital outpatient prospective payment system (OPPS) final rule, the Centers for Medicare and Medicaid Services (CMS) restated and clarified a 2001 policy that required direct physician supervision for outpatient therapeutic services furnished in a hospital outpatient department unless another supervision level is specified for the service. The final rule discussed that direct supervision means a physician or a non-physician practitioner must be immediately available to furnish assistance and direction throughout a procedure in the hospital outpatient department. CAHs and small rural hospitals raised concerns that the policy increased confusion about the types of

therapeutic services that would fall under the supervision requirements. While CMS currently does not enforce federal requirements related to direct supervision for certain outpatient therapeutic services in CAHs and small rural hospitals, providers advocate that lingering confusion could lead to health care access issues for Medicare patients.

## II. EXPLANATION OF THE BILL

A. Extension of Medicare enforcement instruction on supervision requirements for outpatient therapeutic services in CAHs and small rural hospitals through 2015.

### PRESENT LAW

In the calendar year (CY) 2009 Medicare hospital outpatient prospective payment system (OPPS) final rule, the Centers for Medicare and Medicaid Services (CMS) restated and clarified a 2001 policy that required direct physician supervision for outpatient therapeutic services furnished in a hospital outpatient department unless another supervision level is specified for the service. The final rule discussed that direct supervision means a physician or a non-physician practitioner must be immediately available to furnish assistance and direction throughout a procedure in the hospital outpatient department. Critical access hospitals (CAHs) and small rural hospitals raised concerns that the policy increased confusion about the types of therapeutic services that would fall under the supervision requirements.

In 2010, CMS instructed its Medicare contractors not to evaluate or enforce the supervision requirements for therapeutic services furnished to individuals in CAHs for all of CY 2010. As CMS continued to refine its direct supervision policy, the agency extended its non-enforcement instruction through CY 2011 and expanded it to include both CAHs and small rural hospitals (defined as having 100 or fewer beds, being geographically located in a rural area, or are paid under the hospital outpatient PPS using a rural wage index).

Meanwhile, in 2012, CMS established an independent review process that allows the Advisory Panel on Hospital Outpatient Payment (HOP Panel) to advise CMS regarding stakeholder requests for changes in the required supervision level for a specific hospital outpatient therapeutic service. As the HOP Panel conducted its review, in CY 2012 CMS again delayed enforcement of the direct supervision policy for CAHs and small rural hospitals through CY 2013. CMS noted, however, that CY 2013 would be the final year the agency would extend the non-enforcement instruction. In December 2014, Congress passed, and the President signed, P.L. 113–198 which required CMS to continue through CY 2014 the instruction to not enforce Medicare’s direct supervision requirement for outpatient therapeutic services furnished at critical access hospitals and small rural hospitals.

### EXPLANATION OF PROVISION

S. 1461, as modified, would extend, through December 31, 2015, the instruction to not enforce Medicare’s direct supervision require-

ments for outpatient therapeutic services furnished at critical access hospitals and small rural hospitals.

EFFECTIVE DATE

The provision applies to months beginning after December 31, 2014 and expires after December 31, 2015.

**III. BUDGET EFFECTS OF THE BILL**

A. COMMITTEE ESTIMATES

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

B. BUDGET AUTHORITY

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), the Committee states that no provisions of the bill as reported involve new or increased budget authority.

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), the Committee advises that the Congressional Budget Office has submitted a statement on the bill. The following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 9, 2015.*

Hon. ORRIN G. HATCH,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1461, a bill to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lori Housman, who can be reached at 226-9010.

Sincerely,

KEITH HALL.

Enclosure.

*S. 1461—A bill to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2015*

S. 1461 would require the Secretary of Health and Human Services to continue to apply, through calendar year 2015, an exception to requirements that certain outpatient therapeutic services fur-

nished in critical access and small rural hospitals need to be provided under the direct supervision of physicians in the hospital. The Centers for Medicare and Medicaid Services (CMS) currently do not enforce federal requirements related to direct supervision for those services, and CBO anticipates that CMS would not initiate enforcement of such requirements in the near future under current law. (Those services are subject to supervision requirements established under state laws.)

Because CBO expects that S. 1461 would not change how CMS enforces the direct supervision requirement, we estimate that enacting the bill would have no significant effect on the federal budget. Enacting S. 1461 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The bill would not impose intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Lori Housman. The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

#### **IV. VOTES OF THE COMMITTEE**

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the one year extension of the enforcement instructions on supervision requirements of outpatient therapeutic services in Critical Access Hospitals (CAHs) and small rural hospitals, as modified, was ordered favorably reported by voice vote on June 24, 2015.

#### **V. REGULATORY IMPACT AND OTHER MATTERS**

##### **A. REGULATORY IMPACT**

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

*Impact on individuals and businesses, personal privacy and paperwork*

In carrying out the provisions of the bill, there is no expected imposition of additional administrative requirements or regulatory burdens on individuals or businesses. The provisions of the bill do not impact personal privacy.

##### **B. UNFUNDED MANDATES STATEMENT**

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). The Congressional Budget Office estimates the bill would not impose intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

