H. R. 2408

To amend title XVIII of the Social Security Act to update and clarify the classification of and applicable payment methodology for complex rehabilitation technology items under the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2019

Mr. SENSENBRENNER (for himself and Mr. HIGGINS of New York) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend title XVIII of the Social Security Act to update and clarify the classification of and applicable payment methodology for complex rehabilitation technology items under the Medicare program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring Access to Quality Complex Rehabilitation Technology Act of 2019”.
SEC. 2. FINDINGS.

Congress finds the following:

(1) There is a small and specific population of Medicare beneficiaries who have significant disabilities and medical conditions who require complex and individually configured medical equipment, items, and technologies. These items and technologies are referred to as complex rehabilitation technology (or “CRT”) and include specialized wheelchairs, specialized seating and positioning, and other types of adaptive equipment and items that are uniquely configured and fitted to the specific individual. Individuals in this population often qualify for Medicare based on their disability (rather than their age) and have significant disabilities and medical conditions that may include, but are not limited to, cerebral palsy, muscular dystrophy, multiple sclerosis, spinal cord injury, amyotrophic lateral sclerosis (ALS), traumatic brain injury, and spina bifida. This small population comprises less than 15 percent of the Medicare beneficiaries who receive wheelchairs.

(2) Current provisions addressing Medicare benefit categories and related definitions do not sufficiently define certain complex rehabilitation technology items and do not adequately describe and dis-
tistinguish these items as compared to other types of 
Medicare-covered medical items and equipment.

(3) This current lack of definitional clarity for 
complex rehabilitation technology items results in ac-
cess challenges for beneficiaries with significant dis-
abilities and medical conditions, as these items are 
often grouped with standardized, nonspecialized 
products that significantly differ with respect to the 
complexity and the individualized configuration in-
volved, as well as certain evaluation requirements, 
clinical coverage criteria, and other considerations.

(4) To provide adequate access for the small 
population of Medicare beneficiaries with significant 
disabilities and medical conditions who require these 
complex, specialized, and individually configured 
items a distinct Medicare benefit category for com-
plex rehabilitative technology items is needed. This 
will allow for related improvements to clarify appli-
cable coding, coverage, payment, and supplier stand-
ards for such items. A separate benefit category is 
needed to ensure appropriate access to these items 
for individuals with significant disabilities and med-
ical conditions, and will help prevent potential over-
utilization of CRT by individuals for whom such 
items are not medically necessary.
SEC. 3. ESTABLISHING SEPARATE BENEFIT CATEGORY FOR

COMPLEX REHABILITATION TECHNOLOGIES

WITHIN MEDICARE.

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

(1) in subsection (s)(2)—

(A) in subparagraph (GG), by striking “and” at the end;

(B) in subparagraph (HH), by inserting “and” at the end; and

(C) by inserting after subparagraph (HH) the following new paragraph:

“(II) complex rehabilitation technology items (as defined in subsection (kkk));”;

and

(2) by adding at the end, the following new sub-

sections:

“(kkk) COMPLEX REHABILITATION TECHNOLOGY

ITEM.—

“(1) The terms ‘complex rehabilitation tech-

nology item’ and ‘CRT item’ mean an item that—

“(A) is designed, manufactured, individ-

ually configured, adjusted, or modified for a

specific individual to meet the individual’s

unique medical, physical, or functional needs

and capacities;
“(B) is primarily used to serve a medical, physical, or functional purpose and is generally not useful to a person in the absence of disability, illness, injury, or other medical condition; and

“(C) requires certain services to ensure appropriate use of such item, including one or more of the following—

“(i) an evaluation of the features and functions of CRT items to the specific individual who will use such an item, as required under section 1834(x)(2)(B)(ii)(II); or

“(ii) configuring, fitting, programming, adjusting, or adapting the particular complex rehabilitation technology item for use by such individual.

“(2)(A) CRT items shall include—

“(i) complex rehabilitation manual and power wheelchairs, options, and accessories;

“(ii) specialized seating and positioning items, options, and accessories;

“(iii) adaptive equipment such as standing frames and gait trainers and options and accessories; and
“(iv) other items that meet the definition in subparagraph (1), as determined by the Secretary.

“(B) In determining which items meet the definition of a CRT item under this subsection, the Secretary shall review existing and new technologies on at least a yearly basis, and in a manner that takes into consideration technological differences in available items and equipment, as well as the varying clinical needs of individuals who rely on such items and equipment.

“(3)(A) Not later than six months after the date of enactment of this subsection, the Secretary shall publish a list of HCPCS codes that meet the definition of CRT items under this subsection. In considering and publishing the list of codes that meet such definition, the Secretary must ensure that the HCPCS code set provides adequate and appropriate access to existing and new technologies that may improve medical, physical, or functional outcomes for beneficiaries with significant disabilities and medical conditions, taking into consideration technological differences, clinical application, and the unique medical, physical, and functional needs of
beneficiaries who rely on medically necessary CRT items.

“(B) In establishing the list under subparagraph (A), the Secretary shall—

“(i) identify and include existing HCPCS codes that are exclusively CRT items, including items that, as of January 1, 2019, were classified within the following HCPCS codes: E0637, E0638, E0641, E0642, E0953, E0954, E0986, E1002, E1003, E1004, E1005, E1006, E1007, E1008, E1009, E1010, E1011, E1012, E1014, E1037, E1161, E1220, E1228, E1229, E1231, E1232, E1233, E1234, E1235, E1236, E1237, E1238, E1239, E2209, E2291, E2292, E2293, E2294, E2295, E2300, E2301, E2310, E2311, E2312, E2313, E2321, E2322, E2323, E2324, E2325, E2326, E2327, E2328, E2329, E2330, E2331, E2351, E2373, E2374, E2376, E2377, E2609, E2610, E2617, E8000, E8001, E8002, K0005, K0835, K0836, K0837, K0838, K0839, K0840, K0841, K0842, K0843, K0848, K0849, K0850, K0851, K0852, K0853, K0854, K0855, K0856, K0857, K0858, K0859, K0860, K0861, K0862, K0863, K0864, K0868, K0869, K0870,
K0871, K0877, K0878, K0879, K0880, K0884, K0885, K0886, K0890, K0891, and K0898;

“(ii) create and include in the list new HCPCS codes and appropriate code descriptors for CRT items that are currently considered to be included in existing HCPCS codes that include both CRT and non-CRT items, including CRT items that, as of January 1, 2019, were classified within the following HCPCS codes:


“(iii) create new HCPCS codes for other miscellaneous, otherwise not classified, or custom CRT items.

“(C) For each year subsequent to the year during which the Secretary publishes the list under subparagraph (A), the Secretary shall publish any necessary updates to such list (including additions of
new CRT items and any changes in applicable 
HCPCS codes and/or code descriptors) as needed to 
ensure appropriate access to the full range of medi-
cally necessary CRT items and technologies.”

SEC. 4. PAYMENT RULES.

Section 1834 of the Social Security Act (42 U.S.C. 
1395m) is amended by adding at the end the following:
“(x) PAYMENT FOR CRT ITEMS.—
“(1) GENERAL RULE FOR PAYMENT.—
“(A) IN GENERAL.—Not later than the 
date that is one year after the date of the en-
actment of this subsection, subject to subpara-
graph (B), the Secretary shall establish a fee 
schedule that shall apply to CRT items as de-
defined at section 1861(kkk) and shall ensure 
that such fee schedule considers the potential 
impact on quality, access, and beneficiary liabil-
ity, including the likely effects on assignment 
rates and participation rates, and facilitates ap-
propriate access to medically necessary CRT 
items and technologies.
“(B) METHODOLOGY.—In establishing the 
CRT fee schedule payment system under sub-
paragraph (A), the Secretary shall include in 
such fee schedule, at a minimum, the allowance
of purchase of items identified at section 1861(kkk)(3) and—

“(i) shall set the CRT fee schedule payment amounts for CRT items identified by the codes listed in section 1861(kkk)(3)(B)(i) at a purchase price derived from payment amounts from the January 1, 2015 Medicare fee schedule plus annual Consumer Price Index-Urban All Item updates for each subsequent year to such items, as applicable, under this section;

“(ii) shall calculate the payment amounts for CRT items identified by the codes created pursuant to section 1861(kkk)(3)(B)(ii) in accordance with the methodology described in subparagraph (C);

“(iii) shall permit the payment amounts for CRT items identified by codes for miscellaneous, otherwise not classified, or custom items, created pursuant to section 1861(kkk)(3)(B)(iii), to be calculated based on the methodology described in sub-
paragraph (C) applied to the specific item billed under this subsection; and

“(iv) shall require that payment amounts for CRT items be adjusted annually by the increase in the Consumer Price Index-Urban All Item for the 12-month period ending the preceding June 30th.

“(C) PAYMENT AMOUNT CALCULATION.—For purposes of subparagraph (B)(ii), the methodology described in this subparagraph for calculating payment amounts for CRT items identified by the codes specified in such subparagraph is as follows:

“(i) Identify commercial price information (such as manufacturer suggested retail price lists, but not mail order prices or internet retail prices) for CRT items in the applicable code in effect during the base year (which, for purposes of this subparagraph is the calendar year ending December 1986), except that if the only available commercial price information is from a period other than the base year, the Secretary shall use the oldest available pricing for the items and deflate the pricing data
to the mid-point of the base year using the
deflation factors used by the Centers for
Medicare & Medicaid Services for durable
medical equipment at the time of enact-
ment of this section.

“(ii) Using the base year prices, iden-
tify the median price for all CRT items in
the code.

“(iii) Increase the median price by 1.7
percent and inflate to the payment year
using the durable medical equipment fee
schedule update factors required by law
through 2005 and full consumer price
index for all urban consumers update fac-
tors starting in 2006 and for each subse-
quent year, adjusted to reflect applicable
sales tax circumstances, if applicable.

“(D) USED EQUIPMENT.—For used equip-
ment, the Secretary shall set payment at 75
percent of the CRT fee schedule amount for the
CRT item as determined pursuant to the meth-
odology set forth in subparagraph (B).

“(E) PAYMENT FOR TEMPORARY RENT-
AL.—
“(i) In general.—If a CRT item owned by a qualified individual needs to be repaired, payment may be made under this subsection for the temporary rental of a CRT item while the CRT item owned by such individual is being repaired.

“(ii) Basis; limitation.—Payment permitted under clause (i) shall be made on a monthly basis, and the period of rental may not exceed one month.

“(iii) Payment amount.—The amount of payment allowed under clause (i) for a month for the rental of a CRT item shall be 10 percent of the purchase price for the CRT item.

“(F) Replacement of items.—

“(i) Establishment of reasonable useful lifetime.—In accordance with clause (ii), not later than two years of the date of enactment of this subsection, the Secretary shall determine and establish, through a rulemaking process involving advance public notice and an opportunity for stakeholder input and public comments, a reasonable useful lifetime for
CRT items for which payment may be made under this paragraph.

“(ii) LENGTH OF REASONABLE USEFUL LIFETIME.—The reasonable useful lifetime of items of CRT items under this subsection shall be established based on the intended use and continued efficacy, but shall not in any event exceed five years for any CRT item. The Secretary shall ensure that the length of reasonable useful lifetime is appropriate for each sub-category of items within the CRT category.

“(G) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision under this title for payment for CRT items under this part.

“(2) CONDITIONS FOR PAYMENT.—

“(A) LIMITATION ON PAYMENT.—No payment shall be made under this subsection for a CRT item unless such CRT item—

“(i) meets the clinical conditions for payment set forth under subparagraph (B); and

“(ii) is furnished by a supplier accredited pursuant to subparagraph (D) and
meets the supplier and quality standards specified under subparagraph (C).

“(B) CLINICAL CONDITIONS FOR PAYMENT.—

“(i) IN GENERAL.—The Secretary shall establish standards for clinical conditions for payment for CRT items under this subsection.

“(ii) REQUIREMENTS.—The standards established under clause (B)(i) shall require the following:

“(I) WRITTEN ORDER.—A qualified ordering practitioner, as defined in section 1861(mmm) of the Act, shall provide a written order for a CRT item for a specific individual before the Secretary may provide payment for such item for such individual under this subsection.

“(II) CRT EVALUATION.—In the case of a CRT item that is categorized by the Secretary, for purposes of the program under this title, as a manual wheelchair or a power wheelchair, the qualified ordering
practitioner may not provide a written
order under subclause (I) unless the
individual has undergone a CRT eval-
uation conducted by a licensed phys-
ical therapist or occupational therapist
who has no financial relationship with
the CRT supplier. The performance of
such a CRT evaluation by a licensed
physical or occupational therapist
shall not be subject (or counted to-
wards) the limitation on certain ther-
apy services under section 1833(g).

“(III) DOCUMENTATION OF ME-
ICAL NECESSITY.—A qualified order-
ing practitioner who provides a writ-
ten order under subclause (I) shall
maintain documentation of the med-
ical necessity of such order for a pe-
riod of seven years and shall make
such documentation available to the
Secretary upon request. The docu-
mentation of medical necessity under
this clause shall include evidence that
the individual for whom the order was
written has medical, physical, and/or
functional needs and capacities that require the use of the prescribed CRT item.

“(IV) COVERAGE.—In developing the standards under subparagraph (B), the coverage of CRT items shall be based on the individual’s specific medical, physical, or functional needs and capacities for basic and instrumental activities of daily living in any setting in which life activities take place. For purposes of this subclause, basic and instrumental activities of daily living include, but are not limited to, moving from place to place; transferring; maintaining or changing body position; caring for one’s self (such as toileting, bathing, dressing, eating, housekeeping and household management); acquiring necessities, goods and services; engaging in education, employment and economic life; or using transportation.

“(V) COVERAGE REQUIREMENT.—Nothing in this subsection or
section 1861(s)(2)(II) shall be construed as requiring the Secretary to provide for coverage under this title of any item that would not otherwise be covered under this title without application of the amendments made by the Ensuring Access to Quality Complex Rehabilitation Technology Act of 2019, or as changing any coverage requirements in existence as of the date of the enactment of this subsection, including any prior authorization coverage requirements or advance determinations of Medicare coverage requirements that may apply to CRT items.

“(C) **Establishment of Supplier and Quality Standards for CRT.**

“(i) **Establishment.**—The Secretary shall establish and implement supplier and quality standards for suppliers of CRT items to be applied by recognized independent accreditation organizations (as designated under subparagraph (D)), which as set forth below, incorporate exist-
ing standards as well as creating new CRT-specific standards. Such standards shall be applied prospectively and shall be published on the Internet website of the Centers for Medicare & Medicaid Services.

“(ii) REQUIREMENTS OF STANDARDS.—In establishing the supplier and quality standards under clause (i), the Secretary shall require that each supplier of CRT items meets the following requirements:

“(I) DME AND MEDICAL EQUIPMENT AND SUPPLIES STANDARDS.—The supplier complies with all of the standards that are applicable to suppliers of durable medical equipment under subsection (a)(20) and suppliers of medical equipment and supplies under subsection (j).

“(II) QUALIFIED CRT PROFESSIONAL STANDARDS.—The supplier of a CRT item makes available, in each service area served by such supplier, at least one qualified CRT professional to analyze the needs and capac-
ities of individuals for a CRT item in collaboration with the clinical team; assist in selecting any appropriate CRT items for such an individual, given such needs and capacities; and provide technology-related training to such an individual in the proper use and maintenance of the CRT items.

“(III) SERVICE AND REPAIR STANDARDS.—The supplier of the CRT item—

“(aa) makes available, in each service area served by such supplier, at least one qualified CRT service technician to service and repair CRT items that are furnished by such supplier; and

“(bb) provides the individual with written information on accessing service and repair for the CRT item before the CRT item is ordered for the individual involved.

“(D) ACCREDITATION FOR SUPPLIERS OF CRT ITEMS.—
“(i) Requirement for provider or supplier number.—The Secretary shall not provide a supplier of CRT items with a provider or supplier number to submit claims for payment under this subsection unless the supplier is in compliance with the requirements under this subparagraph.

“(ii) Application of accreditation requirement.—In implementing supplier and quality standards under paragraph (C), the Secretary shall require suppliers furnishing CRT items, on or after one year after the standards are published under such paragraph, directly or as a subcontractor for another entity—

“(I) to comply with such standards; and

“(II) to have submitted to the Secretary evidence of accreditation by an accreditation organization designated under subparagraph (iii) demonstrating that the supplier is complying with such standards.

“(iii) Designation of independent accreditation organizations.—Not
later than the date that is one year after the date on which the Secretary imple-
ments the supplier and quality standards under subparagraph (C), the Secretary shall designate and approve one or more independent accreditation organizations that—

“(I) are approved under sub-
section (a)(20)(B), which set forth the designation of independent accredita-
tion organizations for suppliers of dur-
able medical equipment; and

“(II) have the capability to as-
sess whether suppliers of CRT items meet the supplier and quality stand-
ards established under subparagraph (C).

“(3) DEFINITIONS.—For purposes of this sub-
section:

“(A) QUALIFIED CRT PROFESSIONAL.—

“(i) IN GENERAL.—The term ‘quali-
fied CRT professional’ means an individual who—

“(I) is certified by the Rehabili-
tation Engineering and Assistive
Technology Society of North America
as an assistive technology professional
or is certified by another organization
designated by the Secretary (acting in
consultation with relevant parties, in-
cluding manufacturers and suppliers
of CRT items, relevant consumer or-
organizations, and clinicians with knowl-
dge of CRT items and direct experi-
ence working with individuals who use
CRT items) as providing a certifi-
cation that is equivalent to, or more
stringent than, the assistive tech-
nology professional certification; and

“(II) beginning 2 years after the
establishment of the designation
under clause (ii), subject to clause
(ii)(II), achieves an additional des-
ignation that demonstrates the indi-
vidual’s competencies and experience
in supplying CRT items.

“(ii) ADDITIONAL DESIGNATION.—

“(I) Not later than one year
after the date of the enactment of this
subsection, the Secretary, with
stakeholder input, including manufacturers and suppliers of CRT items, relevant consumer organizations, and clinicians with knowledge of CRT items and direct experience working with patients who use CRT items, shall establish the additional designation under clause (i)(II).

“(II) Until such time as the additional designation is established, the term ‘qualified CRT professional’ shall include an individual meeting the requirements in clause (i)(I) only.

“(B) QUALIFIED CRT SERVICE TECHNICIAN.—The term ‘qualified CRT service technician’ means an individual who, with respect to a CRT item—

“(i) has successfully completed a training program approved by the manufacturer of the CRT item;

“(ii) is trained and educated (including through on-the-job training) to assemble, program, adjust, service, and repair CRT items; and
“(iii) on an annual basis, completes at least 10 hours of education specific to the assembly, programming, service, adjusting, and repairing of CRT items.

“(C) QUALIFIED ORDERING PRACTITIONER.—The term ‘qualified ordering practitioner’ means a physician (as defined in section 1861(r)), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)).”.

SEC. 5. CONFORMING AMENDMENTS.

(a) EXEMPTION FROM COMPETITIVE ACQUISITION.—Section 1847(a)(7) of the Social Security Act (42 U.S.C. 1395w–3(a)(7)) is amended by adding at the end the following new subparagraph:

“(C) CRT ITEMS.—For calendar year 2020 and subsequent years, complex rehabilitation technology items (as defined in section 1861(kkk)).”.

(b) PAYMENT EXCLUSIONS.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended—

(1) in paragraph (4), by adding at the end the following sentence “For calendar year 2020 and subsequent years, the items covered by this paragraph shall not include CRT items (as defined in section...
1861(kkk)), which shall be paid pursuant to the fee
schedule and methodology for CRT items described
in section 1834(x) beginning on January 1, 2020,
and in subsequent years.”;

(2) in paragraph (7)(A), by adding at the end
the following: “For calendar year 2020 and subse-
quent years, this paragraph shall not apply to CRT
items under section 1861(kkk).”; and

(3) in paragraph (16), by inserting at the end
the following: “The Secretary shall impose (and,
may, as allowed by the second sentence of this para-
graph, waive) the requirements of the first sentence
of this paragraph to suppliers of complex rehabilita-
tion technology items, except that, in order to avoid
duplicate bonds, the Secretary shall not impose such
requirements with respect to suppliers of complex re-
habilitation technology items if such suppliers also
participate in the Medicare program as suppliers of
durable medical equipment.”.

(c) REQUIREMENTS FOR SUPPLIERS OF MEDICAL
EQUIPMENT AND SUPPLIES.—Section 1834(j)(5) of the
Social Security Act (42 U.S.C. 1395m(j)(5)) is amend-
ed—

(1) by redesignating subparagraphs (E) and
(F) as subparagraphs (F) and (G), respectively; and
(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) complex rehabilitation technology items (as defined in section 1861(kkk));”.

SEC. 6. CONTINUED COVERAGE OF CRT ITEMS.

The amendments made by this Act do not change the availability of coverage in existence as of the date of the enactment of this Act, including prior authorization coverage requirements, for CRT items under title XVIII of the Social Security Act or title XIX of such Act, or any other payor or program, including in the case in which CRT items are covered, as of such date of enactment, as durable medical equipment or under a home health benefit, including the home health benefit under section 1902 of such Act and the regulations implementing such section; nor do the amendments made by this Act change the existing definitions of durable medical equipment or medical equipment and supplies under such Act or as established by any other payor or program, including where CRT items may also fit those definitions. In the case that a CRT item also satisfies the definition of durable medical equipment, or medical equipment and supplies, or another benefit category as defined by an applicable payor, the amendments of this Act shall apply only for purposes of payment of the CRT item under title XVIII of such Act.
SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall be effective beginning on the date that is 30 days after the date of the enactment of this Act, unless otherwise specified in a provision of, including amendment made by, this Act.