

113TH CONGRESS
1ST SESSION

S. 1137

To amend title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2013

Mr. WYDEN (for himself, Ms. LANDRIEU, Ms. CANTWELL, Mr. MERKLEY, and Mr. BLUMENTHAL) 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 modernize payments for ambulatory surgical centers under the Medicare program, 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 “Ambulatory Surgical
5 Center Quality and Access Act of 2013”.

1 **SEC. 2. ALIGNING UPDATES FOR AMBULATORY SURGICAL**
2 **CENTER SERVICES WITH UPDATES FOR OPD**
3 **SERVICES.**

4 Section 1833(i)(2)(D) of the Social Security Act (42
5 U.S.C. 13951(i)(2)(D)) is amended—

6 (1) by redesignating clause (vi) as clause (vii);

7 (2) in the first sentence of clause (v), by insert-
8 ing before the period the following: “and, in the case
9 of 2014 or a subsequent year, by the adjustment de-
10 scribed in subsection (t)(3)(G) for the respective
11 year”; and

12 (3) by inserting after clause (v) the following
13 new clause:

14 “(vi) In implementing the system de-
15 scribed in clause (i) for 2014 and each
16 subsequent year, there shall be an annual
17 update under such system for the year
18 equal to the OPD fee schedule increase
19 factor specified under subsection
20 (t)(3)(C)(iv) for such year, adjusted in ac-
21 cordance with clauses (iv) and (v).”.

22 **SEC. 3. TRANSPARENCY OF QUALITY REPORTS AND APPLI-**
23 **CATION OF VALUE-BASED PURCHASING TO**
24 **ASCS.**

25 (a) **QUALITY MEASURES.**—Paragraph (7) of section
26 1833(i) of the Social Security Act (42 U.S.C. 13951(i))

1 is amended by adding at the end the following new sub-
2 paragraphs:

3 “(C) To the extent that quality measures
4 implemented by the Secretary under this para-
5 graph for ambulatory surgical centers and
6 under section 1833(t)(17) for hospital out-
7 patient departments are applicable to the provi-
8 sion of surgical services in both ambulatory sur-
9 gical centers and hospital outpatient depart-
10 ments, the Secretary shall make reported data
11 available on the website ‘Medicare.gov’ in a
12 manner that will permit side-by-side compari-
13 sons on such measures for ambulatory surgical
14 centers and hospital outpatient departments in
15 the same geographic area.

16 “(D) For each procedure covered for pay-
17 ment in an ambulatory surgical center, the Sec-
18 retary shall publish, along with the quality re-
19 porting comparisons provided for in subpara-
20 graph (C), comparisons of the Medicare pay-
21 ment and beneficiary copayment amounts for
22 the procedure when performed in ambulatory
23 surgical centers and hospital outpatient depart-
24 ments in the same geographic area.

1 “(E) The Secretary shall ensure that an
2 ambulatory surgery center and a hospital has
3 the opportunity to review, and submit any cor-
4 rections for, the data to be made public with re-
5 spect to the ambulatory surgery center under
6 subparagraph (C)(ii) prior to such data being
7 made public.”.

8 (b) AMBULATORY SURGICAL CENTER VALUE-BASED
9 PURCHASING PROGRAM.—Section 1833(i) of the Social
10 Security Act (42 U.S.C. 1395l(i)) is amended by adding
11 at the end the following new paragraph:

12 “(8) VALUE-BASED PURCHASING PROGRAM.—
13 “(A) ESTABLISHMENT.—The Secretary
14 shall establish an ambulatory surgical center
15 value-based purchasing program (in this sub-
16 section referred to as the ‘Program’) under
17 which, subject to subparagraph (I), each ambu-
18 latory surgical center that the Secretary deter-
19 mines meets (or exceeds) the performance
20 standards under subparagraph (D) for the per-
21 formance period (as established under subpara-
22 graph (E)) for a calendar year is eligible, from
23 the amounts made available in the total shared
24 savings pool under subparagraph (I)(iv), for
25 shared savings under subparagraph (I), which

1 shall be in the form, after application of the ad-
2 justments under clauses (iv), (v), and (vi) of
3 paragraph (2)(D), of an increase in the amount
4 of payment determined under the payment sys-
5 tem under paragraph (2)(D) for surgical serv-
6 ices furnished by such center during the subse-
7 quent year, by the value-based percentage
8 amount under subparagraph (H) specified by
9 the Secretary for such center and year.

10 “(B) PROGRAM START DATE.—The Pro-
11 gram shall apply to payments for procedures
12 occurring on or after January 1, 2015.

13 “(C) MEASURES.—

14 “(i) IN GENERAL.—For purposes of
15 the Program, the Secretary shall select
16 measures from the measures specified
17 under paragraph (7).

18 “(ii) AVAILABILITY OF MEASURE AND
19 DATA.—The Secretary may not select a
20 measure under this paragraph for use
21 under the Program with respect to a per-
22 formance period for a calendar year unless
23 such measure has been included, and the
24 reported data available, on the website

1 'Medicare.gov', for at least 1 year prior to
2 the beginning of such performance period.

3 “(iii) MEASURE NOT APPLICABLE UN-
4 LESS ASC FURNISHES SERVICES APPRO-
5 PRIATE TO MEASURE.—A measure selected
6 under this paragraph for use under the
7 Program shall not apply to an ambulatory
8 surgical center if such center does not fur-
9 nish services appropriate to such measure.

10 “(D) PERFORMANCE STANDARDS.—

11 “(i) ESTABLISHMENT.—The Secretary
12 shall establish performance standards with
13 respect to measures selected under sub-
14 paragraph (C)(i) for a performance period
15 for a calendar year.

16 “(ii) ACHIEVEMENT AND IMPROVE-
17 MENT.—The performance standards estab-
18 lished under clause (i) shall include levels
19 of achievement and improvement.

20 “(iii) TIMING.—The Secretary shall
21 establish and announce the performance
22 standards under clause (i) not later than
23 60 days prior to the beginning of the per-
24 formance period for the calendar year in-
25 volved.

1 “(E) PERFORMANCE PERIOD.—For pur-
2 poses of the Program, the Secretary shall estab-
3 lish the performance period for a calendar year.
4 Such performance period shall begin and end
5 prior to the beginning of such calendar year.

6 “(F) ASC PERFORMANCE SCORE.—The
7 Secretary shall develop a methodology for as-
8 sessing the total performance of each ambula-
9 tory surgery center based on performance
10 standards with respect to the measures selected
11 under subparagraph (C) for a performance pe-
12 riod (as established under subparagraph (E)).
13 Using such methodology, the Secretary shall
14 provide for an assessment (in this subsection
15 referred to as the ‘ASC performance score’) for
16 each ambulatory surgical center for each per-
17 formance period. The methodology shall provide
18 that the ASC performance score is determined
19 using the higher of its achievement or improve-
20 ment score for each measure.

21 “(G) APPEALS.—The Secretary shall es-
22 tablish a process by which ambulatory surgery
23 centers may appeal the calculation of the ambu-
24 latory surgery center’s performance with re-
25 spect to the performance standards established

1 under subparagraph (D) and the ambulatory
2 surgery center performance score under sub-
3 paragraph (E). The Secretary shall ensure that
4 such process provides for resolution of appeals
5 in a timely manner.

6 “(H) CALCULATION OF VALUE-BASED IN-
7 CENTIVE PAYMENT.—

8 “(i) VALUE-BASED PERCENTAGE
9 AMOUNT.—For purposes of subparagraph
10 (A), the Secretary shall specify a value-
11 based percentage amount for an ambula-
12 tory surgical center for a calendar year.

13 “(ii) REQUIREMENTS.—In specifying
14 the value-based percentage amount for
15 each ambulatory surgical center for a cal-
16 endar year under clause (i), the Secretary
17 shall ensure that such percentage is based
18 on—

19 “(I) the ASC performance score
20 of the ambulatory surgery center
21 under subparagraph (F); and

22 “(II) the amount of the total sav-
23 ings pool made available under sub-
24 paragraph (I)(iii)(I) for such year.

1 “(I) ANNUAL CALCULATION OF SHARED
2 SAVINGS FUNDING FOR VALUE-BASED INCEN-
3 TIVE PAYMENTS.—

4 “(i) DETERMINING BONUS POOL.—In
5 each year of the Program, ambulatory sur-
6 gery centers shall be eligible to receive pay-
7 ment for shared savings under the Pro-
8 gram only if for such year the sum of—

9 “(I) the estimated amount of ex-
10 penditures under this title for Medi-
11 care fee-for-service beneficiaries (as
12 defined in section 1899(h)(3)) for sur-
13 gical services for which payment is
14 made under the payment system
15 under paragraph (2), adjusted for
16 beneficiary characteristics, and

17 “(II) the estimated amount of ex-
18 penditures under this title for Medi-
19 care fee-for-service beneficiaries (as so
20 defined) for the same surgical services
21 for which payment is made under the
22 prospective payment system under
23 subsection (t), adjusted for beneficiary
24 characteristics,

1 is at least the percent specified by the Sec-
2 retary below the applicable benchmark de-
3 termined for such year under clause (ii).
4 For purposes of this subparagraph, such
5 sum shall be referred to as ‘estimated ex-
6 penditures’. The Secretary shall determine
7 the appropriate percent described in the
8 preceding sentence to account for normal
9 variation in volume of services under this
10 title and to account for changes in the cov-
11 erage of services in ambulatory surgery
12 centers and hospital outpatient depart-
13 ments during the performance period in-
14 volved.

15 “(ii) ESTABLISH AND UPDATE
16 BENCHMARK.—For purposes of clause (i),
17 the Secretary shall calculate a benchmark
18 for each year described in such clause
19 equal to the product of—

20 “(I) estimated expenditures de-
21 scribed in clause (i) for such year, and

22 “(II) the average annual growth
23 in estimated expenditures for the most
24 recent three years.

1 Such benchmark shall be reset at the start
2 of each calendar year, and adjusted for
3 changes in enrollment under the Medicare
4 fee-for-service program.

5 “(iii) PAYMENTS BASED ON SHARED
6 SAVINGS.—If the requirement under clause
7 (i) is met for a year—

8 “(I) 50 percent of the total sav-
9 ings pool estimated under clause (iv)
10 for such year shall be made available
11 for shared savings to be paid to am-
12 bulatory surgical centers under this
13 paragraph;

14 “(II) a percent (as determined
15 appropriate by the Secretary, in ac-
16 cordance with subparagraph (H)) of
17 such amount made available for such
18 year shall be paid as shared savings to
19 each ambulatory surgery center that
20 is determined under the Program to
21 have met or exceeded performance
22 scores for such year; and

23 “(III) all funds made available
24 under subclause (I) for such year
25 shall be used and paid as sharing sav-

1 ings for such year in accordance with
2 subclause (II).

3 “(iv) ESTIMATE OF THE TOTAL SAV-
4 INGS POOL.—For purposes of clause (iii),
5 the Secretary shall estimate for each year
6 of the Program the total savings pool as
7 the product of—

8 “(I) the conversion factor for
9 such year determined by the Secretary
10 under the payment system under
11 paragraph (2)(D) divided by the con-
12 version factor calculated under sub-
13 section (t)(3)(C) for such year for
14 covered OPD services, multiplied by
15 100, and

16 “(II)(aa) the product of the esti-
17 mated Medicare expenditures for sur-
18 gical services described in clause (i)(I)
19 furnished during such year to Medi-
20 care fee-for-service beneficiaries (as
21 defined in section 1899(h)(3)) for
22 which payment is made under sub-
23 section (t) and the average annual
24 growth in the estimated Medicare ex-
25 penditures for such services furnished

1 to Medicare fee-for-service bene-
 2 ficiaries (as so defined) for which pay-
 3 ment is made under subsection (t) in
 4 the most recent available 3 years, less
 5 “(bb) the estimated Medicare ex-
 6 penditures for surgical services de-
 7 scribed in clause (i)(I) furnished to
 8 Medicare fee-for-service beneficiaries
 9 for which payment was made under
 10 subsection (t) in the most recent year.

11 “(J) NO EFFECT IN SUBSEQUENT CAL-
 12 ENDAR YEARS.—The value-based percentage
 13 amount under subparagraph (H) and the per-
 14 cent determined under subparagraph (I)(iii)(I)
 15 shall apply only with respect to the calendar
 16 year involved, and the Secretary shall not take
 17 into account such amount or percentage in
 18 making payments to an ambulatory surgery
 19 center under this section in a subsequent cal-
 20 endar year.”.

21 **SEC. 4. ADVISORY PANEL ON HOSPITAL OUTPATIENT PAY-**
 22 **MENT REPRESENTATION.**

23 (a) ASC REPRESENTATIVE.—The second sentence of
 24 section 1833(t)(9)(A) of the Social Security Act (42
 25 U.S.C. 1395l(t)(9)(A)) is amended by inserting “and sup-

1 pliers subject to the prospective payment system (includ-
2 ing at least one ambulatory surgical center representa-
3 tive)” after “an appropriate selection of representatives of
4 providers”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect on the date of the enact-
7 ment of this Act.

8 **SEC. 5. REASONS FOR EXCLUDING ADDITIONAL PROCE-**
9 **DURES FROM ASC APPROVED LIST.**

10 (a) IN GENERAL.—Section 1833(i)(1) of the Social
11 Security Act (42 U.S.C. 1395l(i)(1)) is amended by add-
12 ing at the end the following: “In updating such lists for
13 application in years beginning after the date of the enact-
14 ment of this sentence, for each procedure that was re-
15 quested to be included in such lists during the public com-
16 ment period but which the Secretary does not propose (in
17 the final rule updating such lists) to so include in such
18 lists, Secretary shall cite in such final rule the specific cri-
19 teria in paragraph (b) or (c) of section 416.166 of title
20 42, Code of Federal Regulations, based on which the pro-
21 cedure was excluded. If paragraph (b) of such section is
22 cited for exclusion of a procedure, the Secretary shall iden-
23 tify the peer reviewed research or the evidence upon which
24 such determination is based. The Secretary may not use

1 or cite section 416.166(c)(7) of such title as criteria or
2 a basis for exclusion of a procedure from such lists.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply to lists of ambulatory surgery
5 procedures for application in years beginning after the
6 date of the enactment of this Act.

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