

113TH CONGRESS  
1ST SESSION

# H. R. 2500

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2013

Mr. NUNES (for himself, Mr. LARSON of Connecticut, Mr. BUCHANAN, Mr. BUCSHON, Mr. BURGESS, Mr. COLE, Mr. GRIFFIN of Arkansas, Mr. HALL, Mr. LARSEN of Washington, Mr. MARCHANT, Mr. MICHAUD, Mr. NUGENT, Mr. PASCRELL, Mr. ROE of Tennessee, Ms. LINDA T. SÁNCHEZ of California, Mr. SCHWEIKERT, Mr. DAVID SCOTT of Georgia, Mr. SESSIONS, Mr. SMITH of Washington, Mr. VEASEY, Mr. WHITFIELD, and Mr. STIVERS) 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

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## 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. 1395l(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. 1395l(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          on such centers and departments available on  
12          the website ‘Medicare.gov’ in a manner that will  
13          permit side-by-side comparisons on such meas-  
14          ures for ambulatory surgical centers and hos-  
15          pital outpatient departments in the same geo-  
16          graphic area.

17          “(D) For each procedure covered for pay-  
18          ment in an ambulatory surgical center, the Sec-  
19          retary shall publish, along with the quality re-  
20          porting comparisons provided for in subpara-  
21          graph (C), comparisons of the Medicare pay-  
22          ment and beneficiary copayment amounts for  
23          the procedure when performed in ambulatory  
24          surgical centers and hospital outpatient depart-  
25          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) 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.

○