

Calendar No. 185114TH CONGRESS
1ST SESSION**S. 1347****[Report No. 114–106]**

To amend title XVIII of the Social Security Act with respect to the treatment of patient encounters in ambulatory surgical centers in determining meaningful EHR use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2015

Mr. ISAKSON (for himself, Mr. BENNET, Mr. WICKER, Ms. STABENOW, Mr. ALEXANDER, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Finance

JULY 30, 2015

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To amend title XVIII of the Social Security Act with respect to the treatment of patient encounters in ambulatory surgical centers in determining meaningful EHR use, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Health
3 Fairness Act of 2015”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Ambulatory surgery centers were not cov-
7 ered under the provisions of the HITECH Act of
8 2009, which created certification standards and in-
9 centives for adopting electronic health record (EHR)
10 technology in the physician office and hospital set-
11 tings.

12 (2) The Centers for Medicare & Medicaid Serv-
13 ices (CMS) defines a meaningful EHR user as an el-
14 igible professional having 50 percent or more of the
15 professional’s outpatient encounters at practices or
16 locations equipped with certified EHR technology.

17 (3) Physicians with patient encounters in an
18 ambulatory surgical center are at a disadvantage
19 when attempting to meet meaningful use require-
20 ments because there currently is not certified EHR
21 technology for such centers.

22 (4) Until such time as EHR technology is cer-
23 tified specifically for use in the ambulatory surgical
24 centers, patient encounters that occur in such a cen-
25 ter should not be used when calculating whether an
26 eligible professional meets meaningful use require-

1 ments, unless an eligible professional elects to in-
2 clude those encounters.

3 **SEC. 3. TREATMENT OF PATIENT ENCOUNTERS IN AMBULA-**
4 **TORY SURGICAL CENTERS IN DETERMINING**
5 **MEANINGFUL EHR USE.**

6 Section 1848(o)(2) of the Social Security Act (42
7 U.S.C. 1395w-4(o)(2)) is amended by adding at the end
8 of the following new subparagraph:

9 “(E) TREATMENT OF PATIENT ENCOUN-
10 TERS AT AMBULATORY SURGICAL CENTERS.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii), any patient encounter of an eligible
13 professional occurring at an ambulatory
14 surgical center (described in section
15 1832(i)(1)(A)) shall not be treated as a
16 patient encounter in determining whether
17 an eligible professional qualifies as a mean-
18 ingful EHR user.

19 “(ii) SUNSET.—Clause (i) shall no
20 longer apply as of the first year that be-
21 gins more than 3 years after the date the
22 Secretary certifies EHR technology for the
23 ambulatory surgical center setting.”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Electronic Health Fair-*
3 *ness Act of 2015”.*

4 **SEC. 2. FINDINGS.**

5 *Congress finds the following:*

6 *(1) Ambulatory surgery centers were not covered*
7 *under the provisions of the HITECH Act of 2009,*
8 *which created certification standards and incentives*
9 *for adopting electronic health record (EHR) tech-*
10 *nology in the physician office and hospital settings.*

11 *(2) The Centers for Medicare & Medicaid Serv-*
12 *ices (CMS) defines a meaningful EHR user as an eli-*
13 *gible professional having 50 percent or more of the*
14 *professional’s outpatient encounters at practices or lo-*
15 *cations equipped with certified EHR technology.*

16 *(3) Physicians with patient encounters in an*
17 *ambulatory surgical center are at a disadvantage*
18 *when attempting to meet meaningful use requirements*
19 *because there currently is not certified EHR tech-*
20 *nology for such centers.*

21 *(4) Until such time as EHR technology is cer-*
22 *tified specifically for use in the ambulatory surgical*
23 *centers, patient encounters that occur in such a center*
24 *should not be used when calculating whether an eligi-*
25 *ble professional meets meaningful use requirements,*

1 *unless an eligible professional elects to include those*
 2 *encounters.*

3 **SEC. 3. TREATMENT OF PATIENT ENCOUNTERS IN AMBULA-**
 4 **TORY SURGICAL CENTERS IN DETERMINING**
 5 **MEANINGFUL EHR USE.**

6 *Section 1848(o)(2) of the Social Security Act (42*
 7 *U.S.C. 1395w-4(o)(2)) is amended by adding at the end*
 8 *of the following new subparagraph:*

9 *“(E) TREATMENT OF PATIENT ENCOUNTERS*
 10 *AT AMBULATORY SURGICAL CENTERS.—*

11 *“(i) IN GENERAL.—Subject to clause*
 12 *(ii), for a payment year after 2015, any pa-*
 13 *tient encounter of an eligible professional*
 14 *occurring at an ambulatory surgical center*
 15 *(described in section 1833(i)(1)(A)) shall*
 16 *not be treated as a patient encounter in de-*
 17 *termining whether an eligible professional*
 18 *qualifies as a meaningful EHR user. Not-*
 19 *withstanding any other provision of law,*
 20 *the Secretary may implement this clause by*
 21 *program instruction or otherwise.*

22 *“(ii) SUNSET.—Clause (i) shall no*
 23 *longer apply as of the first payment year*
 24 *that begins more than 3 years after the date*
 25 *the Secretary determines, through notice*

1 *and comment rulemaking, that certified*
2 *EHR technology is applicable to the ambu-*
3 *latory surgical center setting.”.*

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1ST Session

S. 1347

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