

112TH CONGRESS
1ST SESSION

H. R. 2108

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 2011

Mr. SESSIONS (for himself, Mr. LARSON of Connecticut, Ms. BERKLEY, and Mr. CASSIDY) 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 modernize payments for ambulatory surgical centers under the Medicare program.

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 2011”.

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)) 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 2012 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 2012 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).”.

1 **SEC. 3. IMPROVING ASC QUALITY MEASURE REPORTING**
2 **AND APPLYING VALUE-BASED PURCHASING**
3 **TO ASCS.**

4 (a) **QUALITY MEASURES.**—Paragraph (7) of section
5 1833(i) of the Social Security Act (42 U.S.C. 1395l(i))
6 is amended—

7 (1) in subparagraph (A)—

8 (A) in the first sentence, by inserting “(be-
9 ginning with 2014)” after “with respect to a
10 year”; and

11 (B) by adding at the end the following:

12 “Data required to be submitted on measures se-
13 lected under this paragraph must be on meas-
14 ures that have been selected by the Secretary
15 after consideration of public comments and in
16 accordance with the process described in sub-
17 paragraph (B). Such measures may include
18 healthcare acquired infection measures appro-
19 priate for ambulatory surgery centers, prophylactic
20 IV antibiotic timing, and patient falls. Ambulatory
21 surgical centers determined by the Secretary to
22 furnish a minimal number of items and services
23 under this title with respect to a
24 year shall not be subject to a reduction under
25 this subparagraph for such year.”;

26 (2) in subparagraph (B)—

1 (A) by striking “Except as the Secretary
2 may otherwise provide, the” and inserting “Ex-
3 cept as provided in the subsequent sentence,
4 the”; and

5 (B) by adding at the end the following: “In
6 carrying out the previous sentence, the Sec-
7 retary shall—

8 “(i) ensure that measures meet the
9 definition and process for identifying qual-
10 ity measures under subsections (a) and (b)
11 of section 931 of the Public Health Service
12 Act;

13 “(ii) ensure that measures are devel-
14 oped, selected, and modified in accordance
15 with the development, selection, and modi-
16 fication processes for measures established
17 under section 1890A and in accordance
18 with section 1890;

19 “(iii) ensure that measures are se-
20 lected, and a data submission process is
21 implemented, under this paragraph in a
22 manner that ensures ambulatory surgical
23 centers are able to voluntarily submit data
24 under this paragraph not later than Janu-
25 ary 1, 2013;

1 “(iv) make available an infrastructure
2 which will allow ambulatory surgery cen-
3 ters to submit data on such measures
4 through electronic and other means;

5 “(v) ensure that the form and manner
6 of submissions under this paragraph by
7 ambulatory surgical centers shall include
8 the option of submitting data with claims
9 for payment under this part;

10 “(vi) ensure that a mechanism is de-
11 veloped to allow an ambulatory surgical
12 center to attest that the center did not fur-
13 nish services applicable to selected meas-
14 ures for use under the Program established
15 under paragraph (8); and

16 “(vii) establish and have in place, by
17 not later than June 30, 2013, an informal
18 process for ambulatory surgery centers to
19 seek a review of and appeal the determina-
20 tion that an ambulatory surgical center did
21 not satisfactorily submit data on quality
22 measures.”; and

23 (3) by adding at the end the following new sub-
24 paragraphs:

1 “(C) To the extent that quality measures
2 implemented by the Secretary under this para-
3 graph for ambulatory surgical centers and
4 under section 1833(t)(17) for hospital out-
5 patient departments are applicable to the provi-
6 sion of surgical services in both ambulatory sur-
7 gical centers and hospital outpatient depart-
8 ments, the Secretary shall—

9 “(i) require that both ambulatory sur-
10 gical centers and hospital outpatient de-
11 partments report data on such measures;
12 and

13 “(ii) make reported data available on
14 the website ‘Medicare.gov’ in a manner
15 that will permit side-by-side comparisons
16 on such measures for ambulatory surgical
17 centers and hospital outpatient depart-
18 ments in the same geographic area.

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

1 surgical centers and hospital outpatient depart-
2 ments in the same geographic area.

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

10 (b) AMBULATORY SURGICAL CENTER VALUE-BASED
11 PURCHASING PROGRAM.—Section 1833(i) is amended by
12 adding at the end the following new paragraph:

13 “(8) VALUE-BASED PURCHASING PROGRAM.—

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

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

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

14 “(C) MEASURES.—

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

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

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

1 ing at least one ambulatory surgical center representa-
2 tive)” after “an appropriate selection of representatives of
3 providers”.

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

7 **SEC. 5. ENSURING ACCESS TO SAME DAY SERVICES.**

8 The conditions for coverage of ambulatory surgical
9 center services specified by the Secretary of Health and
10 Human Services pursuant to section 1832(a)(2)(F)(i) of
11 the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i))
12 shall not prohibit ambulatory surgical centers from pro-
13 viding individuals with any notice of rights or other re-
14 quired notice on the date of a procedure if more advance
15 notice is not feasible under the circumstances, including
16 when a procedure is scheduled and performed on the same
17 day.

○