

112TH CONGRESS
1ST SESSION

S. 1173

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

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2011

Mr. WYDEN (for himself and Mr. CRAPO) 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.

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”.

6 **SEC. 2. ALIGNING UPDATES FOR AMBULATORY SURGICAL**
7 **CENTER SERVICES WITH UPDATES FOR OPD**
8 **SERVICES.**

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

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

2 (2) in the first sentence of clause (v), by insert-
 3 ing before the period the following: “and, in the case
 4 of 2012 or a subsequent year, by the adjustment de-
 5 scribed in subsection (t)(3)(G) for the respective
 6 year”; and

7 (3) by inserting after clause (v) the following
 8 new clause:

9 “(vi) In implementing the system de-
 10 scribed in clause (i) for 2012 and each
 11 subsequent year, there shall be an annual
 12 update under such system for the year
 13 equal to the OPD fee schedule increase
 14 factor specified under subsection
 15 (t)(3)(C)(iv) for such year, adjusted in ac-
 16 cordance with clauses (iv) and (v).”.

17 **SEC. 3. IMPROVING ASC QUALITY MEASURE REPORTING**
 18 **AND APPLYING VALUE-BASED PURCHASING**
 19 **TO ASCS.**

20 (a) **QUALITY MEASURES.**—Paragraph (7) of section
 21 1833(i) of the Social Security Act (42 U.S.C. 1395l(i))
 22 is amended—

23 (1) in subparagraph (A)—

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

4 (B) by adding at the end the following:
5 “Data required to be submitted on measures se-
6 lected under this paragraph must be on meas-
7 ures that have been selected by the Secretary
8 after consideration of public comments and in
9 accordance with the process described in sub-
10 paragraph (B). Such measures may include
11 healthcare acquired infection measures appro-
12 priate for ambulatory surgery centers, prophyl-
13 lactic IV antibiotic timing, and patient falls.
14 Ambulatory surgical centers determined by the
15 Secretary to furnish a minimal number of items
16 and services under this title with respect to a
17 year shall not be subject to a reduction under
18 this subparagraph for such year.”;

19 (2) in subparagraph (B)—

20 (A) by striking “Except as the Secretary
21 may otherwise provide, the” and inserting “Ex-
22 cept as provided in the subsequent sentence,
23 the”; and

1 (B) by adding at the end the following: “In
2 carrying out the previous sentence, the Sec-
3 retary shall—

4 “(i) ensure that measures meet the
5 definition and process for identifying qual-
6 ity measures under subsections (a) and (b)
7 of section 931 of the Public Health Service
8 Act;

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

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

22 “(iv) make available an infrastructure
23 which will allow ambulatory surgery cen-
24 ters to submit data on such measures
25 through electronic and other means;

1 “(v) ensure that the form and manner
2 of submissions under this paragraph by
3 ambulatory surgical centers shall include
4 the option of submitting data with claims
5 for payment under this part;

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

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

19 (3) by adding at the end the following new sub-
20 paragraphs:

21 “(C) To the extent that quality measures
22 implemented by the Secretary under this para-
23 graph for ambulatory surgical centers and
24 under section 1833(t)(17) for hospital out-
25 patient departments are applicable to the provi-

1 sion of surgical services in both ambulatory sur-
2 gical centers and hospital outpatient depart-
3 ments, the Secretary shall—

4 “(i) require that both ambulatory sur-
5 gical centers and hospital outpatient de-
6 partments report data on such measures;
7 and

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

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

23 “(E) The Secretary shall ensure that an
24 ambulatory surgery center and a hospital has
25 the opportunity to review, and submit any cor-

1 rections for, the data to be made public with re-
2 spect to the ambulatory surgery center under
3 subparagraph (C)(ii) prior to such data being
4 made public.”.

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

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

9 “(A) ESTABLISHMENT.—The Secretary
10 shall establish an ambulatory surgical center
11 value-based purchasing program (in this sub-
12 section referred to as the ‘Program’) under
13 which, subject to subparagraph (I), each ambu-
14 latory surgical center that the Secretary deter-
15 mines meets (or exceeds) the performance
16 standards under subparagraph (D) for the per-
17 formance period (as established under subpara-
18 graph (E)) for a calendar year is eligible, from
19 the amounts made available in the total shared
20 savings pool under subparagraph (I)(iv), for
21 shared savings under subparagraph (I), which
22 shall be in the form, after application of the ad-
23 justments under clauses (iv), (v), and (vi) of
24 paragraph (2)(D), of an increase in the amount
25 of payment determined under the payment sys-

1 tem under paragraph (2)(D) for surgical serv-
2 ices furnished by such center during the subse-
3 quent year, by the value-based percentage
4 amount under subparagraph (H) specified by
5 the Secretary for such center and year.

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

9 “(C) MEASURES.—

10 “(i) IN GENERAL.—For purposes of
11 the Program, the Secretary shall select
12 measures from the measures specified
13 under paragraph (7).

14 “(ii) AVAILABILITY OF MEASURE AND
15 DATA.—The Secretary may not select a
16 measure under this paragraph for use
17 under the Program with respect to a per-
18 formance period for a calendar year unless
19 such measure has been included, and the
20 reported data available, on the website
21 ‘Medicare.gov’, for at least 1 year prior to
22 the beginning of such performance period.

23 “(iii) MEASURE NOT APPLICABLE UN-
24 LESS ASC FURNISHES SERVICES APPRO-
25 PRIATE TO MEASURE.—A measure selected

1 under this paragraph for use under the
2 Program shall not apply to an ambulatory
3 surgical center if such center does not fur-
4 nish services appropriate to such measure.

5 “(D) PERFORMANCE STANDARDS.—

6 “(i) ESTABLISHMENT.—The Secretary
7 shall establish performance standards with
8 respect to measures selected under sub-
9 paragraph (C)(i) for a performance period
10 for a calendar year.

11 “(ii) ACHIEVEMENT AND IMPROVE-
12 MENT.—The performance standards estab-
13 lished under clause (i) shall include levels
14 of achievement and improvement.

15 “(iii) TIMING.—The Secretary shall
16 establish and announce the performance
17 standards under clause (i) not later than
18 60 days prior to the beginning of the per-
19 formance period for the calendar year in-
20 volved.

21 “(E) PERFORMANCE PERIOD.—For pur-
22 poses of the Program, the Secretary shall estab-
23 lish the performance period for a calendar year.
24 Such performance period shall begin and end
25 prior to the beginning of such calendar year.

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

16 “(G) APPEALS.—The Secretary shall es-
17 tablish a process by which ambulatory surgery
18 centers may appeal the calculation of the ambu-
19 latory surgery center’s performance with re-
20 spect to the performance standards established
21 under subparagraph (D) and the ambulatory
22 surgery center performance score under sub-
23 paragraph (E). The Secretary shall ensure that
24 such process provides for resolution of appeals
25 in a timely manner.

1 “(H) CALCULATION OF VALUE-BASED IN-
2 CENTIVE PAYMENT.—

3 “(i) VALUE-BASED PERCENTAGE
4 AMOUNT.—For purposes of subparagraph
5 (A), the Secretary shall specify a value-
6 based percentage amount for an ambula-
7 tory surgical center for a calendar year.

8 “(ii) REQUIREMENTS.—In specifying
9 the value-based percentage amount for
10 each ambulatory surgical center for a cal-
11 endar year under clause (i), the Secretary
12 shall ensure that such percentage is based
13 on—

14 “(I) the ASC performance score
15 of the ambulatory surgery center
16 under subparagraph (F); and

17 “(II) the amount of the total sav-
18 ings pool made available under sub-
19 paragraph (I)(iii)(I) for such year.

20 “(I) ANNUAL CALCULATION OF SHARED
21 SAVINGS FUNDING FOR VALUE-BASED INCEN-
22 TIVE PAYMENTS.—

23 “(i) DETERMINING BONUS POOL.—In
24 each year of the Program, ambulatory sur-
25 gery centers shall be eligible to receive pay-

1 ment for shared savings under the Pro-
2 gram only if for such year the sum of—

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

11 “(II) the estimated amount of ex-
12 penditures under this title for Medi-
13 care fee-for-service beneficiaries (as so
14 defined) for the same surgical services
15 for which payment is made under the
16 prospective payment system under
17 subsection (t), adjusted for beneficiary
18 characteristics,

19 is at least the percent specified by the Sec-
20 retary below the applicable benchmark de-
21 termined for such year under clause (ii).
22 For purposes of this subparagraph, such
23 sum shall be referred to as ‘estimated ex-
24 penditures’. The Secretary shall determine
25 the appropriate percent described in the

1 preceding sentence to account for normal
2 variation in volume of services under this
3 title and to account for changes in the cov-
4 erage of services in ambulatory surgery
5 centers and hospital outpatient depart-
6 ments during the performance period in-
7 volved.

8 “(ii) ESTABLISH AND UPDATE
9 BENCHMARK.—For purposes of clause (i),
10 the Secretary shall calculate a benchmark
11 for each year described in such clause
12 equal to the product of—

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

15 “(II) the average annual growth
16 in estimated expenditures for the most
17 recent three years.

18 Such benchmark shall be reset at the start
19 of each calendar year, and adjusted for
20 changes in enrollment under the Medicare
21 fee-for-service program.

22 “(iii) PAYMENTS BASED ON SHARED
23 SAVINGS.—If the requirement under clause
24 (i) is met for a year—

1 “(I) 50 percent of the total sav-
2 ings pool estimated under clause (iv)
3 for such year shall be made available
4 for shared savings to be paid to am-
5 bulatory surgical centers under this
6 paragraph;

7 “(II) a percent (as determined
8 appropriate by the Secretary, in ac-
9 cordance with subparagraph (H)) of
10 such amount made available for such
11 year shall be paid as shared savings to
12 each ambulatory surgery center that
13 is determined under the Program to
14 have met or exceeded performance
15 scores for such year; and

16 “(III) all funds made available
17 under subclause (I) for such year
18 shall be used and paid as sharing sav-
19 ings for such year in accordance with
20 subclause (II).

21 “(iv) ESTIMATE OF THE TOTAL SAV-
22 INGS POOL.—For purposes of clause (iii),
23 the Secretary shall estimate for each year
24 of the Program the total savings pool as
25 the product of—

1 “(I) the conversion factor for
2 such year determined by the Secretary
3 under the payment system under
4 paragraph (2)(D) divided by the con-
5 version factor calculated under sub-
6 section (t)(3)(C) for such year for
7 covered OPD services, multiplied by
8 100, and

9 “(II)(aa) the product of the esti-
10 mated Medicare expenditures for sur-
11 gical services described in clause (i)(I)
12 furnished during such year to Medi-
13 care fee-for-service beneficiaries (as
14 defined in section 1899(h)(3)) for
15 which payment is made under sub-
16 section (t) and the average annual
17 growth in the estimated Medicare ex-
18 penditures for such services furnished
19 to Medicare fee-for-service bene-
20 ficiaries (as so defined) for which pay-
21 ment is made under subsection (t) in
22 the most recent available 3 years, less

23 “(bb) the estimated Medicare ex-
24 penditures for surgical services de-
25 scribed in clause (i)(I) furnished to

1 Medicare fee-for-service beneficiaries
2 for which payment was made under
3 subsection (t) in the most recent year.

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

14 **SEC. 4. APC PANEL REPRESENTATION.**

15 (a) ASC REPRESENTATIVE.—The second sentence of
16 section 1833(t)(9)(A) of the Social Security Act (42
17 U.S.C. 1395l(t)(9)(A)) is amended by inserting “and sup-
18 pliers subject to the prospective payment system (includ-
19 ing at least one ambulatory surgical center representa-
20 tive)” after “an appropriate selection of representatives of
21 providers”.

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

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

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

○