

111TH CONGRESS
1ST SESSION

H. R. 2049

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

APRIL 22, 2009

Mr. MEEK of Florida (for himself and Mr. HERGER) 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 Access Act of 2009”.

1 **SEC. 2. MEDICARE PAYMENT FOR AMBULATORY SURGICAL**
2 **CENTER SERVICES.**

3 (a) IN GENERAL.—Section 1833(i) of the Social Se-
4 curity Act (42 U.S.C. 1395l(i)) is amended by striking
5 paragraphs (2) through (6) and inserting the following:

6 “(2)(A) Subject to subparagraphs (B) and (C), the
7 amount of payment to be made under this subsection for
8 facility services furnished to an individual in an ambula-
9 tory surgical center in accordance with paragraph (1) shall
10 be equal to 59 percent of the fee schedule amount deter-
11 mined under paragraph (3)(D) of subsection (t) for pay-
12 ment of the same service furnished in hospital outpatient
13 departments, as adjusted under paragraphs (4)(A), (6),
14 and (15) of such subsection, less a 20 percent beneficiary
15 copayment, except that in no case shall the copayment
16 amount for a procedure performed in a year exceed the
17 amount of the inpatient hospital deductible established
18 under section 1813(b) for that year.

19 “(B) For covered ambulatory surgical center services
20 furnished during calendar year 2010, the amount of pay-
21 ment under this subsection shall be equal to the sum of—

22 “(i) 25 percent of the ambulatory surgical cen-
23 ter payment amount payable under this subsection
24 in 2007; and

25 “(ii) 75 percent of the payment amount under
26 subparagraph (A) for 2010.

1 “(C)(i) Notwithstanding subparagraphs (A) and (B),
2 if a facility service furnished to an individual in an ambu-
3 latory surgical center includes an implantable medical de-
4 vice, the amount of payment for that service shall be equal
5 to the sum of—

6 “(I) 100 percent of the hospital OPD fee sched-
7 ule amount under subsection (t) that the Secretary
8 determines is associated with the device; and

9 “(II) 59 percent of non-device-related compo-
10 nent of such OPD fee schedule amount;
11 less a 20 percent beneficiary copayment.

12 “(ii) For purposes of clause (i), the term ‘implantable
13 medical device’ means a device that—

14 “(I) is an integral and subordinate part of the
15 service furnished;

16 “(II) is used for one patient only;

17 “(III) comes in contact with human tissue; and

18 “(IV) is surgically implanted or inserted,
19 whether or not it remains with the patient when the
20 patient is released from the ambulatory surgical cen-
21 ter.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 1832(a)(2)(F)(i) of such Act (42
24 U.S.C. 1395k(a)(2)(F)(i)) is amended—

1 (A) by striking “the standard overhead
2 amount as determined under section
3 1833(i)(2)(A)” and inserting “the amount de-
4 termined under section 1833(i)(2)”; and

5 (B) by striking all that follows “as full
6 payment for such services” and inserting “,
7 or”.

8 (2) Section 1833(a)(1)(G) of such Act (42
9 U.S.C. 1395l(a)(1)(G)) is amended—

10 (A) by striking “for services furnished be-
11 ginning” and all that follows through “sub-
12 section (i)(2)(D),”; and

13 (B) by striking “such revised payment sys-
14 tem” and inserting “subsection (i)(2)”.

15 (3) Section 1833(a)(4) of such Act (42 U.S.C.
16 1395l(a)(4)) is amended by striking “or (3)”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to ambulatory surgical center serv-
19 ices furnished on or after January 1, 2010.

20 **SEC. 3. QUALITY REPORTING AND COMPARISON.**

21 (a) IN GENERAL.—Paragraph (7) of section 1833(i)
22 of the Social Security Act (42 U.S.C. 1395l(i)) is amend-
23 ed—

24 (1) by redesignating such paragraph as para-
25 graph (3);

1 (2) in subparagraph (A)—

2 (A) by striking “For purposes of para-
3 graph (2)(D)(iv), the” and inserting “The”;

4 (B) by striking “established under para-
5 graph (2)(D)” and inserting “described in para-
6 graph (2)”; and

7 (C) by adding at the end the following:
8 “Data required to be submitted on measures se-
9 lected under this paragraph must be on meas-
10 ures that have been selected by the Secretary
11 after consideration of public comments and that
12 have consensus endorsement from affected par-
13 ties.”;

14 (3) in subparagraph (B)—

15 (A) by striking “Except as the Secretary
16 may otherwise provide, the” and inserting
17 “The”; and

18 (B) by inserting before the period at the
19 end the following: “, except that the form and
20 manner of reporting by ambulatory surgical
21 centers shall include the option of submitting
22 data with claims for payment”; and

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

1 “(C) To the extent that quality measures imple-
2 mented by the Secretary under this paragraph for ambula-
3 tory surgical centers and under section 1833(t)(17) for
4 hospital outpatient departments are applicable to the pro-
5 vision of surgical services in both ambulatory surgical cen-
6 ters and hospital outpatient departments, the Secretary
7 shall—

8 “(i) require that both ambulatory surgical cen-
9 ters and hospital outpatient departments report data
10 on such measures; and

11 “(ii) make reported data available on the
12 website ‘Medicare.gov’ in a manner that will permit
13 side-by-side comparisons on such measures for am-
14 bulatory surgical centers and hospital outpatient de-
15 partments in the same geographic area.

16 “(D) For each procedure covered for payment in an
17 ambulatory surgical center, the Secretary shall publish,
18 along with the quality reporting comparisons provided for
19 in subparagraph (C), comparisons of the Medicare pay-
20 ment and beneficiary copayment amounts for the proce-
21 dure when performed in ambulatory surgical centers and
22 hospital outpatient departments in the same geographic
23 area.”.

24 (b) MEDPAC STUDY.—

1 (1) IN GENERAL.—The Medicare Payment Ad-
2 visory Commission shall conduct a study of out-
3 patient surgical services covered under section 1833
4 of the Social Security Act (42 U.S.C. 1395l). The
5 study shall compare beneficiaries’ use of different
6 settings across geographic areas, spending implica-
7 tions for the Medicare program for such services
8 when provided in different settings, and out-of-pock-
9 et liability for beneficiaries for such services when
10 provided in different settings.

11 (2) REPORT.—Not later than one year after the
12 date of the enactment of this Act, the Commission
13 shall submit to Congress a report on the findings of
14 the study conducted under paragraph (1). Where ap-
15 propriate, such report shall include recommendations
16 on modifications in coverage and payment policies
17 under part B of title XVIII of the Social Security
18 Act needed to optimize the economical utilization of
19 outpatient surgical services.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on January 1, 2010.

22 **SEC. 4. APC PANEL 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. ENSURING ACCESS TO SAME DAY SERVICES.**

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

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