

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.

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## 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

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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.

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 year shall not be  
24 subject to a reduction under this subparagraph for  
25 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.

○