To provide for the development of criteria under the Medicare program for medically necessary short inpatient hospital stays, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2014

Mr. MENENDEZ (for himself and Mrs. FISCHER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the development of criteria under the Medicare program for medically necessary short inpatient hospital stays, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Two-Midnight Rule Coordination and Improvement Act of 2014”.

SEC. 2. DEVELOPMENT OF CRITERIA FOR MEDICALLY NECESSARY SHORT INPATIENT HOSPITAL STAYS.

(a) IN GENERAL.—

(1) DEVELOPMENT OF CRITERIA.—The Secretary shall develop appropriate criteria with regard
to the two-midnight rule (as defined in subsection (e)) for payment under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for a short inpatient hospital stay (as defined in such subsection).

(2) REQUIREMENTS.—The criteria developed under paragraph (1) shall—

(A) account for medical necessity and the appropriateness of an inpatient stay that is less than the two-midnight benchmark; and

(B) subject to paragraph (3), be developed in consultation with interested stakeholders.

(3) IMPLEMENTATION.—The consultation described in paragraph (2)(B) shall be conducted as part of the annual notice and comment rulemaking process implementing the Medicare hospital inpatient prospective payment system for fiscal year 2015.

(b) DEVELOPMENT OF SHORT INPATIENT HOSPITAL STAY PAYMENT METHODOLOGY.—

(1) IN GENERAL.—The Secretary shall develop a payment methodology under the Medicare program under title XVIII of the Social Security Act for hospitals for short inpatient hospital stays. Such methodology—
(A) shall be implemented in a budget neutral manner;

(B) may be a reduced payment amount for such inpatient hospital services than would otherwise apply if paid for under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) or be an alternative payment methodology; and

(C) shall take into consideration the criteria developed under subsection (a).

(2) Timeframe.—The Secretary shall promulgate such methodology as part of the annual regulations implementing the Medicare hospital inpatient prospective payment system for fiscal year 2015.

(c) Crosswalk of ICD–10 Codes and CPT Codes; Crosswalk of DRG and CPT Codes.—

(1) ICD–10-to-CPT Crosswalk.—

(A) In General.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall develop general equivalency maps (referred to in this subsection as “crosswalks”) to link the relevant ICD–10 codes to relevant CPT codes, and the relevant CPT codes to relevant ICD–10 codes, in order to permit comparisons of inpatient hospital serv-
ices, for which payment is made under section 1886 of the Social Security Act (42 U.S.C. 1395ww), and hospital outpatient department services, for which payment is made under section 1833(t) of such Act (42 U.S.C. 1395l(t)). In this subsection the terms “ICD–10 codes” and “CPT codes” include procedure as well as diagnostic codes.

(B) Process.—

(i) In general.—In carrying out subparagraph (A), the Secretary shall develop a proposed ICD–10-to-CPT cross-walk which shall be made available for public comment for a period of not less than 60 days.

(ii) Notice.—The Secretary shall provide notice of the comment period through the following:

(I) Publication of notice of proposed rulemaking in the Federal Register.

(III) An announcement on the Internet Web site of the Centers for Medicare & Medicaid Services of the availability of the proposed crosswalk and the deadline for comments.

(IV) A broadcast through an appropriate Listserv operated by the Centers for Medicare & Medicaid Services.

(iii) USE OF THE ICD–9–CM COORDINATION AND MAINTENANCE COMMITTEE.—The Secretary also shall instruct the ICD–9–CM Coordination and Maintenance Committee to convene a meeting to receive input from the public regarding the proposed ICD–10-to-CPT crosswalk.

(iv) PUBLICATION OF FINAL CROSSWALKS.—Taking into consideration comments received on the proposed crosswalk, the Secretary shall publish a final ICD–10-to-CPT crosswalk under subparagraph (A) and shall post such crosswalk on the Internet Web site of the Centers for Medicare & Medicaid Services.
(v) **UPDATING.**—The Secretary shall update such crosswalk on an annual basis.

(2) **DRG-TO-APC CROSSWALK.**—

(A) **IN GENERAL.**—The Secretary shall, using the ICD–10-to-CPT crosswalk developed under paragraph (1), develop a second crosswalk between diagnosis-related group (DRG) codes for inpatient hospital services and Ambulatory Payment Class (APC) codes for outpatient hospital services.

(B) **DATA TO BE USED.**—In developing such crosswalk, the Secretary shall use claims data for inpatient hospital services for discharges occurring in fiscal years beginning with fiscal year 2015 and for outpatient hospital services furnished in years beginning with 2015.

(C) **PUBLICATION.**—Not later than June 30, 2017, the Secretary shall publish the DRG-to-APC crosswalk developed under this paragraph.

(d) **DELAY OF ENFORCEMENT OF THE TWO-MID-NIGHT RULE.**—

(1) **IN GENERAL.**—The Secretary shall not enforce the provisions of the two-midnight rule with respect to admissions to a hospital for which payment
is made under the Medicare program under title XVIII of the Social Security Act—

(A) for admissions occurring before October 1, 2014; and

(B) in the case of admissions occurring on or after October 1, 2014, prior to the applicable date (as defined in paragraph (3)).

(2) Application to Medicare review contractors.—Paragraph (1) shall also apply to Medicare review contractors (as defined in subsection (e)). No Medicare review contractor may, based on the provisions of the two-midnight rule, deny a claim for payment for inpatient hospital services furnished by a hospital, or inpatient critical access hospital services furnished by a critical access hospital, for which payment may be made under title XVIII of the Social Security Act for discharges occurring before the applicable date (as defined in paragraph (3))—

(A) for medical necessity due to the length of an inpatient stay in such hospital or due to a determination that the services could have been provided on an outpatient basis; or

(B) for requirements for orders, certifications, or recertifications, and associated docu-
mentation relating to the matters described in
subparagraph (A).

(3) APPLICABLE DATE DEFINED.—In this sub-
section, the term “applicable date” means the earlier
of—

(A) the date on which the criteria de-
scribed in subsection (a) are implemented pur-
suant to subsection (a)(3); or

(B) October 1, 2015.

(4) CONTINUATION OF MEDICARE PROBE AND
EDUCATE PROGRAM FOR INPATIENT HOSPITAL ADMI-
SSIONS.—

(A) IN GENERAL.—Subject to subpara-
graph (B), nothing in this subsection shall be
construed to preclude the Secretary from con-
tinuing the conduct by Medicare administrative
contractors of the Medicare Probe and Educate
program (as defined in subparagraph (C)) for
hospital admissions during the delay of enforce-
ment under paragraph (1).

(B) MAINTENANCE OF SAMPLE PREPAY-
MENT RECORD LIMITS.—The Secretary may not
increase the sample of claims selected for pre-
payment review under the Medicare Probe and
Educate program above the number and type
established by the Secretary under such pro-
gram as of November 4, 2013, such as 10
claims for most hospitals and 25 claims for
large hospitals.

(C) Medicare probe and educate pro-
gram defined.—In this paragraph, the term
“Medicare Probe and Educate program” means
the program established by the Secretary as in
effect on November 4, 2013 (and described in
a public document made available by the Cen-
ters for Medicare & Medicaid Services on its
Web site entitled “Frequently Asked Questions
2 Midnight Inpatient Admission Guidance &
Patient Status Reviews for Admissions on or
after October 1, 2013”), under which Medicare
administrative contractors—

(i) conduct prepayment patient status
reviews for inpatient hospital claims with
dates of admission on or after October 1,
2013, and before March 31, 2014; and

(ii) based on the results of such pre-
payment patient status reviews, conduct
educational outreach efforts during the fol-
lowing 3 months.

(e) Definitions.—In this section:
(1) HOSPITAL.—The term “hospital” means the following (insofar as such terms are used under title XVIII of the Social Security Act):

(A) An acute care hospital.

(B) A critical access hospital.

(C) A long-term care hospital.

(D) An inpatient psychiatric facility.

(2) INTERESTED STAKEHOLDERS.—The term “interested stakeholders” means the following:

(A) Hospitals.

(B) Physicians

(C) Medicare administrative contractors under section 1874A of the Social Security Act (42 U.S.C. 1395kk–1).

(D) Recovery audit contractors under section 1893(h) of such Act (42 U.S.C. 1395ddd(h)).

(E) Other parties determined appropriate by the Secretary.

(3) IPPS FY 2014 FINAL RULE.—The term “IPPS FY 2014 Final Rule” means the final rule (CMS–1599–F, CMS–1455–F) published by the Centers for Medicare & Medicaid Services in the Federal Register on August 19, 2013, entitled “Medicare Program; Hospital Inpatient Prospective
Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status” (78 Fed. Reg. 50496 et seq.).

(4) Medicare review contractor.—The term “Medicare review contractor” means any contractor or entity that has entered into a contract or subcontract with the Centers for Medicare & Medicaid Services with respect to the Medicare program to review claims for items and services furnished for which payment is made under title XVIII of the Social Security Act, including—

(A) Medicare administrative contractors under section 1874A of the Social Security Act (42 U.S.C. 1395kk–1); and

(B) recovery audit contractors under section 1893(h) of such Act (42 U.S.C. 1395ddd(h)).

(5) Secretary.—The term “Secretary” means the Secretary of Health and Human Services.

(6) Short inpatient hospital stay.—The term “short inpatient hospital stay” means, with respect to an inpatient admission of an individual enti-
tled to benefits under part A of title XVIII of the Social Security Act to a hospital, a length of stay that is less than the length of stay required to satisfy the 2-midnight benchmark described in section 412.3 of title 42, Code of Federal Regulations, as amended under the amendment 2 referred to in paragraph (7)(A).

(7) TWO-MIDNIGHT RULE.—The term “two-midnight rule” means the following numbered amendments to 42 CFR Chapter IV contained in the IPPS FY 2014 Final Rule (and includes any sub-regulatory guidance issued in the implementation of such amendments and any portion of the preamble of section XI.C. of such rule relating to such amendments):

(A) Amendment 2 (on page 50965), which adds a section 412.3 of title 42, Code of Federal Regulations (relating to admissions).

(B) Amendment 3 (on page 50965), which revises section 412.46 of such title (relating to medical review requirements).

(C) Amendment 23 (on page 50969), which amends paragraphs (d) and (e)(2) of section 424.11 of such title (relating to conditions of payment: General procedures).
(D) Amendment 24 (on pages 50969 and 50970), which revises section 424.13 of such title (relating to requirements for inpatient services of hospitals other than inpatient psychiatric facilities).

(E) Amendment 25 (on page 50970), which revises paragraphs (a), (b), (d)(1), and (e) of section 424.14 of such title (relating to requirements for inpatient services of inpatient psychiatric facilities).

(F) Amendment 26 (on page 50970), which revises section 424.15 of such title (relating to requirements for inpatient CAH services).