

114TH CONGRESS
1ST SESSION

S. 1757

To amend title XVIII of the Social Security Act to promote health care technology innovation and access to medical devices and services for which patients choose to self-pay under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2015

Mr. PORTMAN (for himself, Mr. HEINRICH, Mr. THUNE, and Mr. BENNET) 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 promote health care technology innovation and access to medical devices and services for which patients choose to self-pay under the Medicare program, and for other purposes.

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 “Accelerating Innova-
5 tion in Medicine Act of 2015” or the “AIM Act of 2015”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

1 (1) Innovation in health care technology is nec-
2 essary to improve health outcomes and depends in
3 part on the ability of medical technology developers,
4 including scientists, physicians, engineers, and pa-
5 tient advocates, to introduce medical devices into the
6 marketplace.

7 (2) Even after meeting requirements for mar-
8 keting set by the Food and Drug Administration,
9 there may be uncertainties about patient access
10 through government health care programs, causing
11 significant delays in bringing innovative medical de-
12 vices to patients or causing medical technology de-
13 velopers to abandon potential health care solutions.

14 (3) Patients covered by the Medicare program
15 are often willing to enter into self-pay arrangements
16 with physicians and other providers to purchase
17 items or services, yet under current laws restricting
18 such freedom of choice, the self-pay arrangements
19 may be associated with regulatory impediments or a
20 risk of civil penalties.

21 (4) Enabling health care technology manufac-
22 turers to designate products to be directly available
23 to self-pay patients and excluded from government
24 health program payments at an early stage of prod-
25 uct development will promote innovation and result

1 in increased patient access to desired products and
 2 services, save taxpayer dollars, and reduce adminis-
 3 trative burdens on physicians and the government.

4 (5) Enabling health care technology manufac-
 5 turers to designate their devices as available to self-
 6 pay patients would permit a window of time during
 7 which additional data may be obtained on outcomes,
 8 comparative clinical effectiveness or other data ele-
 9 ments for possible future coverage by the Medicare
 10 program.

11 **SEC. 3. ESTABLISHMENT OF MANUFACTURER OPT-OUT**
 12 **PROGRAM FOR MEDICAL DEVICES.**

13 (a) IN GENERAL.—Section 1862 of the Social Secu-
 14 rity Act (42 U.S.C. 1395y) is amended adding at the end
 15 the following new subsection:

16 “(p) ESTABLISHMENT OF ACCELERATING INNOVA-
 17 TION IN MEDICINE (AIM) LIST OF MEDICAL DEVICES
 18 VOLUNTARILY EXCLUDED FROM COVERAGE.—

19 “(1) IN GENERAL.—Not later than 90 days
 20 after the date of the enactment of this subsection,
 21 the Secretary shall develop and maintain a listing
 22 (in this section referred to as the ‘AIM list’) of med-
 23 ical devices for which, because of their inclusion in
 24 such listing, no insurance benefit and no payment
 25 may be made for such a device (or for any items or

1 services related to furnishing such device) under this
 2 title either directly or on a capitated basis such that
 3 no claim for payment may be submitted under this
 4 title for such a device (or for any items or services
 5 related to furnishing such device) and an individual
 6 who consents to receive such a device is responsible
 7 for payment for the device (and for any items and
 8 services related to furnishing such device).

9 “(2) PROCEDURES FOR INCLUSION IN AIM
 10 LIST.—

11 “(A) REQUIREMENT FOR WRITTEN CON-
 12 SENT OF MANUFACTURER.—No medical device
 13 may be included in the AIM list without the
 14 written consent of the manufacturer of the de-
 15 vice.

16 “(B) SUBMISSION PROCESS.—A manufac-
 17 turer seeking to have a medical device included
 18 in the AIM list shall submit to the Secretary a
 19 request for inclusion of the device in the AIM
 20 list. In the case of such a device for which—

21 “(i) there is a request for approval or
 22 clearance for marketing and sale of the de-
 23 vice by the Food and Drug Administration
 24 pursuant to authority granted by the Fed-
 25 eral Food, Drug, and Cosmetic Act (21

1 U.S.C. 301 et seq.), including pursuant to
2 section 510(k) or 515(c) of such Act (21
3 U.S.C. 360(k), 360e(c)), the request for
4 inclusion of the device in the AIM list may
5 not be submitted earlier than the date of
6 the request for such approval or clearance
7 and no later than the first business day of
8 the month beginning at least 30 days after
9 the date of such approval or clearance; or

10 “(ii) the device is exempt from such
11 approval and clearance requirements, the
12 request may be submitted at a time that is
13 not later than the first business day of the
14 month beginning at least 30 days after the
15 date of the first sale of the device by its
16 manufacturer.

17 “(3) LISTING PERIODS; REMOVAL FROM LIST.—

18 “(A) 3-YEAR LISTING PERIODS.—A med-
19 ical device included in the AIM list shall be ini-
20 tially listed for a period of 3 years and shall re-
21 main so listed for subsequent 3-year periods
22 subject to subparagraphs (B) and (C).

23 “(B) REMOVAL AT REQUEST OF MANUFAC-
24 Turer.—At any time a device of a manufac-
25 turer included in the AIM list shall be removed

1 from the AIM list upon the written request of
2 the manufacturer. Subject to subparagraph (C),
3 such a device of a manufacturer may not be re-
4 moved from the AIM list except upon the writ-
5 ten request of the manufacturer.

6 “(C) PROVISION OF DATA ON CLINICAL
7 STUDIES AS A CONDITION FOR CONTINUED
8 LISTING.—As a condition for the continued in-
9 clusion of the device of a manufacturer in the
10 AIM list for a subsequent 3-year listing period
11 under subparagraph (A), the manufacturer
12 shall provide the Secretary with published or
13 publicly available data on clinical studies com-
14 pleted for the device at the end of the previous
15 3-year listing period. If the Secretary deter-
16 mines that a manufacturer of a device has ma-
17 terially failed to provide such data for the de-
18 vice, the Secretary may remove the device from
19 the AIM list or not renew the listing for the de-
20 vice or both.

21 “(4) MEDICAL DEVICE DEFINED.—In this sub-
22 section, the term ‘medical device’ has the meaning
23 given the term ‘device’ in section 201(h) of the Fed-
24 eral Food, Drug, and Cosmetic Act (21 U.S.C.
25 321(h)).

1 “(5) POSTING OF LISTED DEVICES ON
2 WEBSITE.—The Secretary shall post on a public
3 website of the Department of Health and Human
4 Services or other publicly accessible manner a list of
5 the medical devices included in the AIM list and
6 shall provide for updating the website on a real-time
7 basis (but no less frequently than monthly) to reflect
8 changes in the medical devices in the AIM list.

9 “(6) REGULATIONS NOT REQUIRED.—Nothing
10 in this subsection shall be construed as requiring the
11 Secretary to promulgate regulations to carry out this
12 subsection.

13 “(7) REQUIREMENT FOR INFORMED CONSENT
14 IN ORDER FOR PROVIDER TO CHARGE FOR DE-
15 VICE.—If a physician or other entity furnishes a
16 medical device included in the AIM list to an indi-
17 vidual under this title and failed to obtain, before
18 furnishing the device, an appropriate informed con-
19 sent under which the individual is informed of and
20 accepts liability under paragraph (1) for payment
21 for the device (and for items and services related to
22 furnishing such device), the physician or other entity
23 is deemed to have agreed not to impose any charge
24 under this title for such device (and for items and
25 services related to furnishing such device).”.

1 (b) CONFORMING AMENDMENT.—Section 1862(a) of
2 the Social Security Act (42 U.S.C. 1395y(a)) is amend-
3 ed—

4 (1) in paragraph (24), by striking “or” at the
5 end;

6 (2) in paragraph (25), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (25) the fol-
9 lowing new paragraph:

10 “(26) where such expenses are for a medical de-
11 vice included in the AIM list under section 1862(p)
12 (or for items and services related to furnishing such
13 device).”.

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