

113TH CONGRESS
1ST SESSION

H. R. 3698

To delay the enforcement of the Medicare two-midnight rule for short inpatient hospital stays until the implementation of a new Medicare payment methodology for short inpatient hospital stays, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2013

Mr. GERLACH (for himself, Mr. CROWLEY, Mr. REED, Mr. ROSKAM, and Mr. KIND) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To delay the enforcement of the Medicare two-midnight rule for short inpatient hospital stays until the implementation of a new Medicare payment methodology for short inpatient hospital stays, 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 “Two-Midnight Rule
5 Delay Act of 2013”.

1 **SEC. 2. ENFORCEMENT DELAY OF MEDICARE TWO-MID-**
2 **NIGHT RULE TO PERMIT DEVELOPMENT OF A**
3 **NEW MEDICARE PAYMENT METHODOLOGY**
4 **FOR SHORT INPATIENT HOSPITAL STAYS.**

5 (a) DELAY IN ENFORCEMENT OF TWO-MIDNIGHT
6 RULE.—

7 (1) IN GENERAL.—The Secretary of Health and
8 Human Services (referred to in this section as the
9 “Secretary”) shall not enforce the provisions of the
10 two-midnight rule (as defined in paragraph (2)) with
11 respect to admissions to a hospital (as defined in
12 subsection (d)) for which payment is made under the
13 Medicare program under title XVIII of the Social
14 Security Act (42 U.S.C. 1395 et seq.) for admissions
15 occurring before October 1, 2014.

16 (2) TWO-MIDNIGHT RULE DEFINED.—In this
17 section, the term “two-midnight rule” means the fol-
18 lowing numbered amendments to 42 CFR Chapter
19 IV contained in the IPPS FY 2014 Final Rule (and
20 includes any sub-regulatory guidance issued in the
21 implementation of such amendments and any por-
22 tion of the preamble of section XI.C. of such rule re-
23 lating to such amendments):

24 (A) Amendment 2 (on page 50965), which
25 adds a section 412.3 of title 42, Code of Fed-
26 eral Regulations (relating to admissions).

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

4 (C) Amendment 23 (on page 50969),
5 which amends paragraphs (d) and (e)(2) of sec-
6 tion 424.11 of such title (relating to conditions
7 of payment: General procedures).

8 (D) Amendment 24 (on pages 50969 and
9 50970), which revises section 424.13 of such
10 title (relating to requirements for inpatient
11 services of hospitals other than inpatient psy-
12 chiatric facilities).

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

18 (F) Amendment 26 (on page 50970),
19 which revises section 424.15 of such title (relat-
20 ing to requirements for inpatient CAH serv-
21 ices).

22 (3) IPPS FY 2014 FINAL RULE DEFINED.—In
23 this section, the term “IPPS FY 2014 Final Rule”
24 means the final rule (CMS–1599–F, CMS–1455–F)
25 published by the Centers for Medicare & Medicaid

1 Services in the Federal Register on August 19,
2 2013, entitled “Medicare Program; Hospital Inpa-
3 tient Prospective Payment Systems for Acute Care
4 Hospitals and the Long-Term Care Hospital Pro-
5 spective Payment System and Fiscal Year 2014
6 Rates; Quality Reporting Requirements for Specific
7 Providers; Hospital Conditions of Participation; Pay-
8 ment Policies Related to Patient Status” (78 Fed-
9 eral Register 50496 et seq.).

10 (4) APPLICATION TO MEDICARE REVIEW CON-
11 TRACTORS.—

12 (A) IN GENERAL.—Paragraph (1) shall
13 also apply to Medicare review contractors (as
14 defined in subparagraph (B)). No Medicare re-
15 view contractor may deny a claim for payment
16 for inpatient hospital services furnished by a
17 hospital, or inpatient critical access hospital
18 services furnished by a critical access hospital,
19 for which payment may be made under title
20 XVIII of the Social Security Act for discharges
21 occurring before the date specified in paragraph
22 (1)—

23 (i) for medical necessity due to the
24 length of an inpatient stay in such hospital
25 or due to a determination that the services

1 could have been provided on an outpatient
2 basis; or

3 (ii) for requirements for orders, cer-
4 tifications, or recertifications, and associ-
5 ated documentation relating to the matters
6 described in clause (i).

7 (B) MEDICARE REVIEW CONTRACTOR DE-
8 FINED.—In subparagraph (A), the term “Medi-
9 care review contractor” means any contractor
10 or entity that has entered into a contract or
11 subcontract with the Centers for Medicare &
12 Medicaid Services with respect to the Medicare
13 program to review claims for items and services
14 furnished for which payment is made under
15 title XVIII of the Social Security Act, includ-
16 ing—

17 (i) Medicare administrative contrac-
18 tors under section 1874A of the Social Se-
19 curity Act (42 U.S.C. 1395kk–1); and

20 (ii) recovery audit contractors under
21 section 1893(h) of such Act (42 U.S.C.
22 1395ddd(h)).

23 (5) CONTINUATION OF MEDICARE PROBE AND
24 EDUCATE PROGRAM FOR INPATIENT HOSPITAL AD-
25 MISSIONS.—

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

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

18 (C) MEDICARE PROBE AND EDUCATE PRO-
19 GRAM DEFINED.—In this paragraph, the term
20 “Medicare Probe and Educate program” means
21 the program established by the Secretary as in
22 effect on November 4, 2013 (and described in
23 a public document made available by the Cen-
24 ters for Medicare & Medicaid Services on its
25 Website entitled “Frequently Asked Questions 2

1 Midnight Inpatient Admission Guidance & Pa-
2 tient Status Reviews for Admissions on or after
3 October 1, 2013”) under which Medicare ad-
4 ministrative contractors—

5 (i) conduct prepayment patient status
6 reviews for inpatient hospital claims with
7 dates of admission on or after October 1,
8 2013, and before March 31, 2014; and

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

13 (b) SHORT INPATIENT HOSPITAL STAY PAYMENT
14 METHODOLOGY.—

15 (1) IN GENERAL.—The Secretary shall develop
16 a payment methodology under the Medicare program
17 for hospitals for short inpatient hospital stays (as
18 defined in paragraph (2)). Such payment method-
19 ology may be a reduced payment amount for such
20 inpatient hospital services than would otherwise
21 apply if paid for under section 1886(d) of the Social
22 Security Act (42 U.S.C. 1395ww(d)) or may be an
23 alternative payment methodology. The Secretary
24 shall promulgate such payment methodology as part
25 of the annual regulations implementing the Medicare

1 hospital inpatient prospective payment system for
2 fiscal year 2015.

3 (2) SHORT INPATIENT HOSPITAL STAY DE-
4 FINED.—In this section, the term “short inpatient
5 hospital stay” means, with respect to an inpatient
6 admission of an individual entitled to benefits under
7 part A of title XVIII of the Social Security Act to
8 a hospital, a length of stay that is less than the
9 length of stay required to satisfy the 2-midnight
10 benchmark described in section 412.3 of title 42,
11 Code of Federal Regulation, as amended under the
12 Amendment 2 referred to in subsection (a)(2)(A).

13 (c) CROSSWALK OF ICD–10 CODES AND CPT
14 CODES; CROSSWALK OF DRG AND CPT CODES.—

15 (1) ICD10–TO–CPT CROSSWALK.—

16 (A) IN GENERAL.—Not later than 2 years
17 after the date of the enactment of this Act, the
18 Secretary shall develop general equivalency
19 maps (referred to in this subsection as “cross-
20 walks”) to link the relevant ICD–10 codes to
21 relevant CPT codes, and the relevant CPT
22 codes to relevant ICD–10 codes, in order to
23 permit comparisons of inpatient hospital serv-
24 ices, for which payment is made under section
25 1886 of the Social Security Act (42 U.S.C.

1 1395ww), and hospital outpatient department
2 services, for which payment is made under sec-
3 tion 1833(t) of such Act (42 U.S.C. 1395l(t)).
4 In this subsection the terms “ICD–10 codes”
5 and “CPT codes” include procedure as well as
6 diagnostic codes.

7 (B) PROCESS.—

8 (i) IN GENERAL.—In carrying out
9 subparagraph (A), the Secretary shall de-
10 velop a proposed ICD10–to–CPT crosswalk
11 which shall be made available for public
12 comment for a period of not less than 60
13 days.

14 (ii) NOTICE.—The Secretary shall
15 provide notice of the comment period
16 through the following:

17 (I) Publication of notice of pro-
18 posed rulemaking in the Federal Reg-
19 ister.

20 (II) A solicitation posted on the
21 Internet Website of the Centers for
22 Medicare & Medicaid Services.

23 (III) An announcement on the
24 Internet Website of the Centers for
25 Medicare & Medicaid Services of the

1 availability of the proposed crosswalk
2 and the deadline for comments.

3 (IV) A broadcast through an ap-
4 propriate Listserv operated by the
5 Centers for Medicare & Medicaid
6 Services.

7 (iii) USE OF THE ICD-9-CM COORDI-
8 NATION AND MAINTENANCE COMMITTEE.—
9 The Secretary also shall instruct the ICD-
10 9-CM Coordination and Maintenance
11 Committee to convene a meeting to receive
12 input from the public regarding the pro-
13 posed ICD10-to-CPT crosswalk.

14 (iv) PUBLICATION OF FINAL CROSS-
15 WALKS.—Taking into consideration com-
16 ments received on the proposed crosswalk,
17 the Secretary shall publish a final ICD10-
18 to-CPT crosswalk under subparagraph (A)
19 and shall post such crosswalk on the Inter-
20 net Website of the Centers for Medicare &
21 Medicaid Services.

22 (v) UPDATING.—The Secretary shall
23 update such crosswalk on an annual basis.

24 (2) DRG-TO-APC CROSSWALK.—

1 (A) IN GENERAL.—The Secretary shall,
2 using the ICD10–to–CPT crosswalk developed
3 under paragraph (1), develop a second cross-
4 walk between diagnosis-related group (DRG)
5 codes for inpatient hospital services and Ambu-
6 latory Payment Class (APC) codes for out-
7 patient hospital services.

8 (B) DATA TO BE USED.—In developing
9 such crosswalk, the Secretary shall use claims
10 data for inpatient hospital services for dis-
11 charges occurring in fiscal years beginning with
12 fiscal year 2015 and for outpatient hospital
13 services furnished in years beginning with 2015.

14 (C) PUBLICATION.—Not later than June
15 30, 2017, the Secretary shall publish the DRG–
16 to–APC crosswalk developed under this para-
17 graph.

18 (d) HOSPITAL DEFINED.—For purposes of this sec-
19 tion, the term “hospital” means the following (insofar as
20 such terms are used under title XVIII of the Social Secu-
21 rity Act):

- 22 (1) An acute care hospital.
23 (2) A critical access hospital.
24 (3) A long-term care hospital.

- 1 (4) An inpatient psychiatric facility.

