

114TH CONGRESS
1ST SESSION

S. 2409

To amend titles XVIII and XIX of the Social Security Act to improve payments for hospital outpatient department services and complex rehabilitation technology and to improve program integrity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2015

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to improve payments for hospital outpatient department services and complex rehabilitation technology and to improve program integrity, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare and Medicaid Improvements and Adjustments
6 Act of 2015”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CORRECTIONS TO OUTPATIENT PROVISION

Sec. 101. Continuing Medicare payment under HOPD prospective payment system for services furnished by off-campus outpatient departments of providers under development.

Sec. 102. Maintaining cancer hospital adjustment under Medicare off-campus outpatient departments of a provider payment policy.

TITLE II—PROVISIONS PROTECTING PEOPLE WITH DISABILITIES AND CHRONIC CARE NEEDS

Sec. 201. Non-application of Medicare fee schedule adjustments for wheelchair accessories and seat and back cushions when furnished in connection with complex rehabilitative power wheelchairs.

Sec. 202. Treatment of infusion drugs furnished through durable medical equipment.

Sec. 203. Transitional payment rules for certain radiation therapy services under the Medicare physician fee schedule.

Sec. 204. Fairness in Medicaid supplemental needs trusts.

TITLE III—PROGRAM INTEGRITY, PAYMENT EFFICIENCY, AND ADDITIONAL MEDICARE POLICIES

Sec. 301. Strengthening penalties for the illegal distribution of a Medicare, Medicaid, or CHIP beneficiary identification or billing privileges.

Sec. 302. Civil monetary penalties for violations related to grants, contracts, and other agreements.

Sec. 303. Authorizing a blanket meaningful use significant hardship exception.

Sec. 304. Limiting Federal Medicaid reimbursement to States for durable medical equipment (DME) to Medicare payment rates.

Sec. 305. Treatment of patient encounters in ambulatory surgical centers in determining meaningful EHR use.

1 **TITLE I—CORRECTIONS TO** 2 **OUTPATIENT PROVISION**

3 **SEC. 101. CONTINUING MEDICARE PAYMENT UNDER HOPD**
4 **PROSPECTIVE PAYMENT SYSTEM FOR SERV-**
5 **ICES FURNISHED BY OFF-CAMPUS OUT-**
6 **PATIENT DEPARTMENTS OF PROVIDERS**
7 **UNDER DEVELOPMENT.**

8 Section 1833(t) of the Social Security Act (42 U.S.C.
9 1395l(t)) is amended—

(1) in paragraph (1)(B)(v), by inserting “, subject to subparagraph (E) of such paragraph,” after “2017, by”; and

(2) in paragraph (21)—

(A) in subparagraph (C) by striking “that are described in paragraph (1)(B)(v) shall be made” and inserting “to which paragraph (1)(B)(v) applies shall be the amount determined”;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following new subparagraph:

“(E) NON-APPLICATION WITH RESPECT TO DEPARTMENTS UNDER DEVELOPMENT.—

“(i) IN GENERAL.—Paragraph (1)(B)(v) shall not apply to an off-campus outpatient department of a provider that is determined by the Secretary to be under development as of the date of the enactment of the Bipartisan Budget Act of 2015.

“(ii) APPLICATION.—For purposes of paragraph (1)(B)(v) and this paragraph, in determining whether an off-campus out-

1 patient department of a provider was
2 under development, the Secretary shall re-
3 quire that as of the date of the enactment
4 of such Act the department met—

5 “(I) at least one of the require-
6 ments described in clause (iii); and

7 “(II) any additional requirements
8 the Secretary determines would indi-
9 cate whether such off-campus out-
10 patient department of a provider was
11 under development as of such date.

12 “(iii) REQUIREMENTS DESCRIBED.—
13 The following requirements are described
14 in this clause:

15 “(I) Architectural plans were
16 completed.

17 “(II) Zoning requirements were
18 met or a request for approval of meet-
19 ing such zoning requirements was
20 submitted to appropriate agencies.

21 “(III) Necessary approvals from
22 appropriate State agencies were ap-
23 plied for or received.”.

1 **SEC. 102. MAINTAINING CANCER HOSPITAL ADJUSTMENT**
 2 **UNDER MEDICARE OFF-CAMPUS OUTPATIENT**
 3 **DEPARTMENTS OF A PROVIDER PAYMENT**
 4 **POLICY.**

5 Section 1833(t) of the Social Security Act (42 U.S.C.
 6 1395l(t)) is amended—

7 (1) in paragraph (1)(B)(v), as amended by sec-
 8 tion 101(1), by striking “subparagraph (E)” and in-
 9 serting “subparagraph (F)”; and

10 (2) in paragraph (21), as added by section 603
 11 of the Bipartisan Budget Act of 2015 and as
 12 amended by section 101(2)—

13 (A) by redesignating subparagraphs (D),
 14 (E), and (F) as subparagraphs (E), (F), and
 15 (G), respectively;

16 (B) by inserting after subparagraph (C)
 17 the following new subparagraph:

18 “(D) APPLICATION OF CANCER HOSPITAL
 19 ADJUSTMENT.—The Secretary shall apply the
 20 adjustment under paragraph (18) to applicable
 21 items and services furnished on or after Janu-
 22 ary 1, 2017, by an off-campus outpatient de-
 23 partment of a provider (as defined in subpara-
 24 graph (B)) of a hospital described in section
 25 1886(d)(1)(B)(v)—

1 “(i) as if this paragraph (other than
 2 this subparagraph) and paragraph
 3 (1)(B)(v) were not applicable to such ap-
 4 plicable items and services and such appli-
 5 cable items and services were covered OPD
 6 services and paid under this subsection;
 7 and

8 “(ii) without application of para-
 9 graphs (2)(E) and (9)(B).”; and
 10 (C) in subparagraph (G)(iii), as redesign-
 11 nated by subparagraph (A) of this paragraph,
 12 by striking “subparagraph (D)” and inserting
 13 “subparagraph (E)”.

14 **TITLE II—PROVISIONS PRO-**
 15 **TECTING PEOPLE WITH DIS-**
 16 **ABILITIES AND CHRONIC**
 17 **CARE NEEDS**

18 **SEC. 201. NON-APPLICATION OF MEDICARE FEE SCHEDULE**
 19 **ADJUSTMENTS FOR WHEELCHAIR ACCES-**
 20 **SORIES AND SEAT AND BACK CUSHIONS**
 21 **WHEN FURNISHED IN CONNECTION WITH**
 22 **COMPLEX REHABILITATIVE POWER WHEEL-**
 23 **CHAIRS.**

24 (a) NON-APPLICATION.—

1 (1) IN GENERAL.—Notwithstanding any other
 2 provision of law, the Secretary of Health and
 3 Human Services shall not, prior to January 1, 2017,
 4 use information on the payment determined under
 5 the competitive acquisition programs under section
 6 1847 of the Social Security Act (42 U.S.C. 1395w–
 7 3)) to adjust the payment amount that would other-
 8 wise be recognized under section 1834(a)(1)(B)(ii)
 9 of such Act (42 U.S.C. 1395m(a)(1)(B)(ii)) for
 10 wheelchair accessories (including seating systems)
 11 and seat and back cushions when furnished in con-
 12 nection with Group 3 complex rehabilitative power
 13 wheelchairs.

14 (2) IMPLEMENTATION.—Notwithstanding any
 15 other provision of law, the Secretary may implement
 16 this subsection by program instruction or otherwise.

17 (b) GAO STUDY AND REPORT.—

18 (1) STUDY.—

19 (A) IN GENERAL.—The Comptroller Gen-
 20 eral of the United States shall conduct a study
 21 on wheelchair accessories (including seating sys-
 22 tems) and seat and back cushions furnished in
 23 connection with Group 3 complex rehabilitative
 24 power wheelchairs. Such study shall include an
 25 analysis of the following with respect to such

1 wheelchair accessories and seat and back cush-
2 ions in each of the groups described in clauses
3 (i) through (iii) of subparagraph (B):

4 (i) The item descriptions and associ-
5 ated HCPCS codes for such wheelchair ac-
6 cessories and seat and back cushions.

7 (ii) A breakdown of utilization and ex-
8 penditures for such wheelchair accessories
9 and seat and back cushions under title
10 XVIII of the Social Security Act.

11 (iii) A comparison of the payment
12 amount under the competitive acquisition
13 program under section 1847 of such Act
14 (42 U.S.C. 1395w-3) with the payment
15 amount that would otherwise be recognized
16 under section 1834 of such Act (42 U.S.C.
17 1395m), including beneficiary cost sharing,
18 for such wheelchair accessories and seat
19 and back cushions.

20 (iv) The aggregate distribution of
21 such wheelchair accessories and seat and
22 back cushions furnished under such title
23 XVIII within each of the groups described
24 in subparagraph (B).

1 (v) Other areas determined appro-
2 priate by the Comptroller General.

3 (B) GROUPS DESCRIBED.—The following
4 groups are described in this subparagraph:

5 (i) Wheelchair accessories and seat
6 and back cushions furnished predominantly
7 with Group 3 complex rehabilitative power
8 wheelchairs.

9 (ii) Wheelchair accessories and seat
10 and back cushions furnished predominantly
11 with power wheelchairs that are not de-
12 scribed in clause (i).

13 (iii) Other wheelchair accessories and
14 seat and back cushions furnished with ei-
15 ther power wheelchairs described in clause
16 (i) or (ii).

17 (2) REPORT.—Not later than June 1, 2016, the
18 Comptroller General of the United States shall sub-
19 mit to Congress a report containing the results of
20 the study conducted under paragraph (1), together
21 with recommendations for such legislation and ad-
22 ministrative actions as the Comptroller General de-
23 termines to be appropriate.

1 **SEC. 202. TREATMENT OF INFUSION DRUGS FURNISHED**
 2 **THROUGH DURABLE MEDICAL EQUIPMENT.**

3 Section 1842(o)(1) of the Social Security Act (42
 4 U.S.C. 1395u(o)(1)) is amended—

5 (1) in subparagraph (C), by inserting “(and in-
 6 cluding a drug or biological described in subpara-
 7 graph (D)(i) furnished during the 6-year period be-
 8 ginning on January 1, 2017)” after “2005”; and

9 (2) in subparagraph (D)—

10 (A) by striking “infusion drugs” and in-
 11 serting “infusion drugs or biologicals” each
 12 place it appears; and

13 (B) in clause (i)—

14 (i) by striking “2004” and inserting
 15 “2004 (other than during the 6-year pe-
 16 riod beginning on January 1, 2017)”; and

17 (ii) by striking “for such drug”.

18 **SEC. 203. TRANSITIONAL PAYMENT RULES FOR CERTAIN**
 19 **RADIATION THERAPY SERVICES UNDER THE**
 20 **MEDICARE PHYSICIAN FEE SCHEDULE.**

21 (a) IN GENERAL.—Section 1848 of the Social Secu-
 22 rity Act (42 U.S.C. 1395w–4) is amended—

23 (1) in subsection (b), as amended by section
 24 502 of division O of the Consolidated Appropriations
 25 Act, 2016, by adding at the end the following new
 26 paragraph:

1 “(11) SPECIAL RULE FOR CERTAIN RADIATION
 2 THERAPY SERVICES.—The code definitions, the work
 3 relative value units under subsection (c)(2)(C)(i),
 4 and the direct inputs for the practice expense rel-
 5 ative value units under subsection (c)(2)(C)(ii) for
 6 radiation treatment delivery and related imaging
 7 services (identified in 2016 by HCPCS G-codes
 8 G6001 through G6015) for the fee schedule estab-
 9 lished under this subsection for services furnished in
 10 2017 and 2018 shall be the same as such defini-
 11 tions, units, and inputs for such services for the fee
 12 schedule established for services furnished in 2016.”;
 13 and

14 (2) in subsection (c)(2)(K), by adding at the
 15 end the following new clause:

16 “(iv) TREATMENT OF CERTAIN RADI-
 17 ATION THERAPY SERVICES.—Radiation
 18 treatment delivery and related imaging
 19 services identified under subsection (b)(11)
 20 shall not be considered as potentially
 21 misvalued services for purposes of this sub-
 22 paragraph and subparagraph (O) for 2017
 23 and 2018.”.

24 (b) REPORT TO CONGRESS ON ALTERNATIVE PAY-
 25 MENT MODEL.—Not later than 18 months after the date

1 of the enactment of this Act, the Secretary of Health and
2 Human Services shall submit to Congress a report on the
3 development of an episodic alternative payment model for
4 payment under the Medicare program under title XVIII
5 of the Social Security Act for radiation therapy services
6 furnished in nonfacility settings.

7 **SEC. 204. FAIRNESS IN MEDICAID SUPPLEMENTAL NEEDS**
8 **TRUSTS.**

9 (a) IN GENERAL.—Section 1917(d)(4)(A) of the So-
10 cial Security Act (42 U.S.C. 1396p(d)(4)(A)) is amended
11 by inserting “the individual,” after “for the benefit of such
12 individual by”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to trusts established on or after
15 the date of the enactment of this Act.

1 **TITLE III—PROGRAM INTEG-**
2 **RITY, PAYMENT EFFICIENCY,**
3 **AND ADDITIONAL MEDICARE**
4 **POLICIES**

5 **SEC. 301. STRENGTHENING PENALTIES FOR THE ILLEGAL**
6 **DISTRIBUTION OF A MEDICARE, MEDICAID,**
7 **OR CHIP BENEFICIARY IDENTIFICATION OR**
8 **BILLING PRIVILEGES.**

9 Section 1128B(b) of the Social Security Act (42
10 U.S.C. 1320a–7b(b)) is amended by adding at the end the
11 following:

12 “(4) Whoever without lawful authority know-
13 ingly and willfully purchases, sells or distributes, or
14 arranges for the purchase, sale, or distribution of a
15 beneficiary identification number or unique health
16 identifier for a health care provider under title
17 XVIII, title XIX, or title XXI shall be imprisoned
18 for not more than 10 years or fined not more than
19 \$500,000 (\$1,000,000 in the case of a corporation),
20 or both.”.

1 **SEC. 302. CIVIL MONETARY PENALTIES FOR VIOLATIONS**
2 **RELATED TO GRANTS, CONTRACTS, AND**
3 **OTHER AGREEMENTS.**

4 (a) IN GENERAL.—Section 1128A of the Social Secu-
5 rity Act (42 U.S.C. 1320a–7a) is amended by adding at
6 the end the following new subsection:

7 “(o) Any person (including an organization, agency,
8 or other entity, but excluding a program beneficiary, as
9 defined in subsection (r)(4)) that, with respect to a grant,
10 contract, or other agreement for which the Secretary of
11 Health and Human Services provides funding—

12 “(1) knowingly presents or causes to be pre-
13 sented a specified claim (as defined in subsection
14 (r)(6)) under such grant, contract, or other agree-
15 ment that the person knows or should know is false
16 or fraudulent;

17 “(2) knowingly makes, uses, or causes to be
18 made or used any false statement, omission, or mis-
19 representation of a material fact in any application,
20 proposal, bid, progress report, or other document
21 that is required to be submitted in order to directly
22 or indirectly receive or retain funds provided in
23 whole or in part by such Secretary pursuant to such
24 grant, contract, or other agreement;

25 “(3) knowingly makes, uses, or causes to be
26 made or used, a false record or statement material

1 to a false or fraudulent specified claim under such
2 grant, contract, or other agreement;

3 “(4) knowingly makes, uses, or causes to be
4 made or used, a false record or statement material
5 to an obligation to pay or transmit funds or property
6 to such Secretary with respect to such grant, con-
7 tract, or other agreement, or knowingly conceals or
8 knowingly and improperly avoids or decreases an ob-
9 ligation to pay or transmit funds or property to such
10 Secretary with respect to such grant, contract, or
11 other agreement; or

12 “(5) fails to grant timely access, upon reason-
13 able request (as defined by such Secretary in regula-
14 tions), to the Inspector General of the Department,
15 for the purpose of audits, investigations, evaluations,
16 or other statutory functions of such Inspector Gen-
17 eral in matters involving such grants, contracts, or
18 other agreements,

19 shall be subject, in addition to any other penalties that
20 may be prescribed by law, to a civil money penalty in cases
21 under paragraph (1), of not more than \$10,000 for each
22 specified claim; in cases under paragraph (2), not more
23 than \$50,000 for each false statement, omission, or mis-
24 representation of a material fact; in cases under para-
25 graph (3), not more than \$50,000 for each false record

1 or statement; in cases under paragraph (4), not more than
2 \$50,000 for each false record or statement or \$10,000 for
3 each day that the person knowingly conceals or knowingly
4 and improperly avoids or decreases an obligation to pay;
5 or in cases under paragraph (5), not more than \$15,000
6 for each day of the failure described in such paragraph.
7 In addition, in cases under paragraphs (1) and (3), such
8 a person shall be subject to an assessment of not more
9 than 3 times the amount claimed in the specified claim
10 described in such paragraph in lieu of damages sustained
11 by the United States or a specified State agency because
12 of such specified claim, and in cases under paragraphs (2)
13 and (4), such a person shall be subject to an assessment
14 of not more than 3 times the total amount of the funds
15 described in paragraph (2) or (4), respectively (or, in the
16 case of an obligation to transmit property to the Secretary
17 Health and Human Services described in paragraph (4),
18 of the value of the property described in such paragraph)
19 in lieu of damages sustained by the United States or a
20 specified State agency because of such case. In addition,
21 the Secretary of Health and Human Services may make
22 a determination in the same proceeding to exclude the per-
23 son from participation in the Federal health care pro-
24 grams (as defined in section 1128B(f)(1)) and to direct

1 the appropriate State agency to exclude the person from
2 participation in any State health care program.

3 “(p) The provisions of subsections (c), (d), and (g)
4 shall apply to a civil money penalty or assessment under
5 subsection (o) in the same manner as such provisions
6 apply to a penalty, assessment, or proceeding under sub-
7 section (a).

8 “(q) With respect to a penalty or assessment under
9 subsection (o), the Inspector General of the Department
10 is authorized to receive, and to retain for current use, such
11 amounts of such penalty or assessment as are necessary
12 to provide reimbursement for the costs of conducting in-
13 vestigations and audits with respect to such subsection
14 and for monitoring compliance plans with respect to such
15 subsection when such penalty or assessment is ordered by
16 a court, voluntarily agreed to by the payor, or otherwise.
17 Funds received by such Inspector General as reimburse-
18 ment under the preceding sentence shall be deposited to
19 the credit of the appropriations from which initially paid,
20 or to appropriations for similar purposes currently avail-
21 able at the time of deposit, and shall remain available for
22 obligation for 1 year from the date of the deposit of such
23 funds.

24 “(r) For purposes of this subsection and subsections
25 (o), (p), and (q):

1 “(1) The term ‘Department’ means the Depart-
2 ment of Health and Human Services.

3 “(2) The term ‘material’ means having a nat-
4 ural tendency to influence, or be capable of influ-
5 encing, the payment or receipt of money or property.

6 “(3) The term ‘other agreement’ includes a co-
7 operative agreement, scholarship, fellowship, loan,
8 subsidy, payment for a specified use, donation agree-
9 ment, award, or sub-award (regardless of whether
10 one or more of the persons entering into the agree-
11 ment is a contractor or sub-contractor).

12 “(4) The term ‘program beneficiary’ means, in
13 the case of a grant, contract, or other agreement de-
14 signed to accomplish the objective of awarding or
15 otherwise furnishing benefits or assistance to indi-
16 viduals and for which the Secretary of Health and
17 Human Services provides funding, an individual who
18 applies for, or who receives, such benefits or assist-
19 ance from such grant, contract, or other agreement.
20 Such term does not include, with respect to such
21 grant, contract, or other agreement, an officer, em-
22 ployee, or agent of a person or entity that receives
23 such grant or that enters into such contract or other
24 agreement.

1 “(5) The term ‘recipient’ includes a sub-recipi-
2 ent or subcontractor.

3 “(6) The term ‘specified claim’ means any ap-
4 plication, request, or demand under a grant, con-
5 tract, or other agreement for money or property,
6 whether or not the United States or a specified
7 State agency has title to the money or property, that
8 is not a claim (as defined in subsection (i)(2)) and
9 that—

10 “(A) is presented or caused to be pre-
11 sented to an officer, employee, or agent of the
12 Department or agency thereof, or of any speci-
13 fied State agency; or

14 “(B) is made to a contractor, grantee, or
15 any other recipient if the money or property is
16 to be spent or used on the Department’s behalf
17 or to advance a Department program or inter-
18 est, and if the Department—

19 “(i) provides or has provided any por-
20 tion of the money or property requested or
21 demanded; or

22 “(ii) will reimburse such contractor,
23 grantee or other recipient for any portion
24 of the money or property which is re-
25 quested or demanded.

1 “(7) The term ‘specified State agency’ means
 2 an agency of a State government established or des-
 3 ignated to administer or supervise the administra-
 4 tion of a grant, contract, or other agreement funded
 5 in whole or in part by the Secretary of Health and
 6 Human Services.

7 “(s) For purposes of subsection (o), the term ‘obliga-
 8 tion’ means an established duty, whether or not fixed, aris-
 9 ing from an express or implied contractual, grantor-grant-
 10 ee, or licensor-licensee relationship, for a fee-based or
 11 similar relationship, from statute or regulation, or from
 12 the retention of any overpayment.”.

13 (b) CONFORMING AMENDMENTS.—Section 1128A of
 14 the Social Security Act (42 U.S.C. 1320a–7a) is amend-
 15 ed—

16 (1) in subsection (d)—

17 (A) in paragraph (1), by inserting “or
 18 specified claims” after “claims”; and

19 (B) in paragraph (2), by inserting “or
 20 specified claims” after “claims”;

21 (2) in subsection (e), by inserting “or specified
 22 claim” after “claim”; and

23 (3) in subsection (f)—

1 (A) by inserting “or specified claim (as de-
 2 fined in subsection (r)(6))” after “district
 3 where the claim”;

4 (B) by inserting “(or, with respect to a
 5 person described in subsection (o), the person)”
 6 after “claimant”;

7 (C) by inserting “that are not received by
 8 the Inspector General of the Department of
 9 Health and Human Services under subsection
 10 (q) as reimbursement” after “amounts recov-
 11 ered”; and

12 (D) by inserting “(or, in the case of a pen-
 13 alty or assessment under subsection (o), by a
 14 specified State agency (as defined in subsection
 15 (r)(7))” after “or a State agency”.

16 **SEC. 303. AUTHORIZING A BLANKET MEANINGFUL USE SIG-**
 17 **NIFICANT HARDSHIP EXCEPTION.**

18 (a) PHYSICIANS’ SERVICES.—Section 1848(a)(7)(B)
 19 of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(B))
 20 is amended by inserting “(or through a blanket exception
 21 with respect to the payment adjustment for 2017, but only
 22 if a request for such exception is filed no later than June
 23 30, 2016)” after “on a case-by-case basis”.

24 (b) HOSPITAL SERVICES.—Section
 25 1886(b)(3)(B)(ix)(II) of the Social Security Act (42

1 U.S.C. 1395ww(b)(3)(B)(ix)(II)) is amended by inserting
 2 “(or through a blanket exception with respect to the pay-
 3 ment adjustment for fiscal year 2017, but only if a request
 4 for such exception is filed no later than June 30, 2016)”
 5 after “on a case-by-case basis”.

6 (c) IMPLEMENTATION AUTHORITY.—The Secretary
 7 of Health and Human Services may implement the amend-
 8 ments made by this section by interim final rule with com-
 9 ment period.

10 **SEC. 304. LIMITING FEDERAL MEDICAID REIMBURSEMENT**
 11 **TO STATES FOR DURABLE MEDICAL EQUIP-**
 12 **MENT (DME) TO MEDICARE PAYMENT RATES.**

13 Section 1903(i)(27) of the Social Security Act (42
 14 U.S.C. 1396b(i)(27)), as added by section 503(a)(1) of di-
 15 vision O of the Consolidated Appropriations Act, 2016, is
 16 amended by striking “January 1, 2019” and inserting
 17 “October 1, 2018”.

18 **SEC. 305. TREATMENT OF PATIENT ENCOUNTERS IN AMBU-**
 19 **LATORY SURGICAL CENTERS IN DETER-**
 20 **MINING MEANINGFUL EHR USE.**

21 Section 1848(o)(2) of the Social Security Act (42
 22 U.S.C. 1395w–4(o)(2)) is amended by adding at the end
 23 the following new subparagraph:

24 “(E) TREATMENT OF PATIENT ENCOUN-
 25 TERS AT AMBULATORY SURGICAL CENTERS.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), with respect to a payment adjustment
3 applied under subsection (a)(7)(A), for
4 2017 or a subsequent year, any patient en-
5 counter of an eligible professional occur-
6 ring at an ambulatory surgical center (de-
7 scribed in section 1833(i)(1)(A)) shall not
8 be treated as a patient encounter in deter-
9 mining whether an eligible professional
10 qualifies as a meaningful EHR user. Not-
11 withstanding any other provision of law,
12 the Secretary may implement this clause
13 by program instruction or otherwise.

14 “(ii) SUNSET.—Clause (i) shall no
15 longer apply as of the first payment year
16 that begins more than 3 years after the
17 date the Secretary determines, through no-
18 tice and comment rulemaking, that cer-
19 tified EHR technology is applicable to the
20 ambulatory surgical center setting.”.

○