

118TH CONGRESS  
1ST SESSION

# S. 312

To amend title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under the Medicare program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

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

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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, 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 “Outpatient Surgery  
5 Quality and Access Act of 2023”.

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. 1395l(i)(2)(D)) is amended—

6 (1) in clause (v)—

7 (A) in the first sentence, by inserting be-  
8 fore the period the following: “and, in the case  
9 of 2024 or a subsequent year, by the adjust-  
10 ment described in subsection (t)(3)(G) for the  
11 respective year”; and

12 (B) by moving the margin 6 ems to the  
13 left;

14 (2) by redesignating clause (vi) as clause (vii);  
15 and

16 (3) by inserting after clause (v) the following  
17 new clause:

18 “(vi) In implementing the system described in clause  
19 (i) for 2024 and each subsequent year, there shall be an  
20 annual update under such system for the year equal to  
21 the OPD fee schedule increase factor specified under sub-  
22 section (t)(3)(C)(iv) for such year, adjusted in accordance  
23 with clauses (iv) and (v).”.

1 **SEC. 3. TRANSPARENCY OF QUALITY REPORTING AND**  
2 **MEDICARE BENEFICIARY INFORMATION.**

3 Paragraph (7) of section 1833(i) of the Social Secu-  
4 rity Act (42 U.S.C. 1395l(i)) is amended by adding at the  
5 end the following new subparagraphs:

6 “(C) To the extent that quality measures imple-  
7 mented by the Secretary under this paragraph for ambula-  
8 tory surgical centers and under section 1833(t)(17) for  
9 hospital outpatient departments are applicable to the pro-  
10 vision of surgical services in both ambulatory surgical cen-  
11 ters and hospital outpatient departments, the Secretary  
12 shall make reported data on such centers and departments  
13 available on the website ‘Medicare.gov’ in a manner that  
14 will permit side-by-side comparisons on such measures for  
15 ambulatory surgical centers and hospital outpatient de-  
16 partments in the same geographic area.

17 “(D) The Secretary shall ensure that an ambulatory  
18 surgery center and a hospital has the opportunity to re-  
19 view, and submit any corrections for, the data to be made  
20 public with respect to the ambulatory surgery center under  
21 subparagraph (C) prior to such data being made public.

22 “(E) The Secretary shall develop materials and in-  
23 form beneficiaries under this title of publicly available  
24 comparisons provided for in subparagraph (C).”.

1 **SEC. 4. ADVISORY PANEL ON HOSPITAL OUTPATIENT PAY-**  
 2 **MENT REPRESENTATION.**

3 (a) ASC REPRESENTATIVE.—The second sentence of  
 4 section 1833(t)(9)(A) of the Social Security Act (42  
 5 U.S.C. 1395l(t)(9)(A)) is amended by inserting “and sup-  
 6 pliers subject to the prospective payment system (includ-  
 7 ing at least one ambulatory surgical center representa-  
 8 tive)” after “an appropriate selection of representatives of  
 9 providers”.

10 (b) EFFECTIVE DATE.—The amendment made by  
 11 subsection (a) shall take effect on the date of the enact-  
 12 ment of this Act.

13 **SEC. 5. REASONS FOR EXCLUDING ADDITIONAL PROCE-**  
 14 **DURES FROM ASC APPROVED LIST.**

15 (a) IN GENERAL.—Section 1833(i)(1) of the Social  
 16 Security Act (42 U.S.C. 1395l(i)(1)) is amended by add-  
 17 ing at the end the following: “In updating such lists for  
 18 application in years beginning after the date of the enact-  
 19 ment of this sentence, for each procedure that was re-  
 20 quested to be included in such lists during the public com-  
 21 ment period but which the Secretary does not propose (in  
 22 the final rule updating such lists) to so include in such  
 23 lists, the Secretary shall cite in such final rule the specific  
 24 criteria in paragraph (b) or (c) of section 416.166 of title  
 25 42, Code of Federal Regulations, based on which the pro-  
 26 cedure was excluded. If paragraph (b) of such section is

1 cited for exclusion of a procedure, the Secretary shall iden-  
 2 tify the peer reviewed research or the evidence upon which  
 3 such determination is based.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
 5 subsection (a) shall apply to lists of ambulatory surgery  
 6 procedures for application in years beginning after the  
 7 date of the enactment of this Act.

8 **SEC. 6. LIMITATION ON AMBULATORY SURGERY CENTER**  
 9 **COPAYMENT FOR A PROCEDURE TO THE**  
 10 **HOSPITAL DEDUCTIBLE AMOUNT.**

11 Section 1833(a)(1)(G) of the Social Security Act (42  
 12 U.S.C. 1395l(a)(1)(G)) is amended by inserting the fol-  
 13 lowing before the comma at the end: “, except that in no  
 14 case shall the copayment amount for such services fur-  
 15 nished in a year exceed the amount of the inpatient hos-  
 16 pital deductible established under section 1813(b) for the  
 17 year (and, notwithstanding any other provision of this sec-  
 18 tion, the amount of payment for such services shall be in-  
 19 creased by the amount of any reduction in the copayment  
 20 amount for such services pursuant to this subparagraph)”.

21 **SEC. 7. ALIGNMENT OF BUDGET NEUTRALITY ADJUSTMENT**  
 22 **FOR OUTPATIENT SURGICAL PROCEDURES.**

23 (a) PROHIBITING UNAUTHORIZED AGENCY AC-  
 24 TION.—Section 1833(i)(2)(D)(ii) of the Social Security  
 25 Act (42 U.S.C. 1395l(i)(2)(D)(ii)) is amended by adding

1 at the end the following: “The preceding sentence shall  
2 only apply to the first year the system described in clause  
3 (i) was implemented and shall not apply to any year after  
4 2023.”.

5 (b) COMBINING VOLUME FOR BUDGET NEUTRALITY  
6 CALCULATION.—Section 1833(t)(9)(B) of the Social Se-  
7 curity Act (42 U.S.C. 1395l(t)(9)(B)) is amended by in-  
8 serting “taking into account the volume of procedures paid  
9 under this subsection combined with the volume of proce-  
10 dures paid under subsection (i),” after “subparagraph  
11 (A),”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 subsections (a) and (b) shall apply in years beginning after  
14 the date of the enactment of this Act.

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