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110TH CONGRESS
1ST SESSION

S. 2250

To amend title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under the Medicare Program.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2007

Mr. CRAPO 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.

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 ''Ambulatory Surgical Center Medicare Payment Modernization Act of 2007''.

SEC. 2. MEDICARE PAYMENT FOR AMBULATORY SURGICAL CENTER SERVICES.

(a) IN GENERAL.—Section 1833(i) of the Social Security Act (42 U.S.C. 1395l(i)) is amended to read as follows:

"(i)(1) Payment shall be made under this part in the amount specified under paragraph (2) for facility services furnished to an individual in an ambulatory surgical center (meeting the standards specified under section 1832(a)(2)(F)(i)) in connection with any outpatient surgical procedure covered under this part as a hospital outpatient department service, except for those procedures that the Secretary designates, in consultation with appropriate trade and professional organizations (including those having direct experience with ambulatory surgical centers), as posing a significant safety risk or requiring an overnight stay when performed in ambulatory surgical centers. Absent an identifiable safety risk specific to the performance of a particular procedure in an ambulatory surgical center, the Secretary shall presume that an outpatient surgical procedure covered under this part as a hospital outpatient department service does not pose a significant safety risk when performed in ambulatory surgical centers. Not less frequently than once every two years the Secretary shall review and, may, after public comment, make appropriate adjustments to this list of procedures excluded from coverage when performed in ambulatory surgical centers as the Secretary deems necessary.

"(2)(A) Subject to subparagraphs (B), (C), and (D), the amount of payment to be made under this subsection

for facility services furnished to an individual in an ambulatory surgical center in accordance with paragraph (1) shall be equal to 75 percent of the fee schedule amount determined under paragraph (3)(A) of subsection (t) for payment of the same service furnished in hospital outpatient departments, as adjusted under paragraphs (4)(A), (6), and (15) of such subsection, less a 20 percent beneficiary copayment.

"(B) For covered ambulatory surgical center services furnished on or after January 1, 2008, and before January 1, 2012, for which the ambulatory surgical center payment amount payable under this subsection in 2007 (in this subsection referred to as the '2007 ASC payment amount') is less than 75 percent of the hospital OPD fee schedule amount under subsection (t) in 2007 for the same services, the amount of payment under this subsection shall be calculated as follows:

"(i) For services furnished during 2008, the amount shall be equal to the sum of—

"(I) 80 percent of the 2007 ASC payment amount, as increased by the market basket percentage increase applicable under subsection (t)(3)(C)(iv) for OPD services occurring during the fiscal year ending in such year; and

"(II) 20 percent of the payment amount under paragraph (2)(A) for 2008.

"(ii) For services furnished during 2009, the amount shall be equal to the sum of—

"(I) 60 percent of the 2007 ASC payment amount as increased under clause (i)(I) and as further increased by the market basket percentage increase applicable under subsection (t)(3)(C)(iv) for OPD services occurring during the fiscal year ending in such year; and

"(II) 40 percent of the payment amount under paragraph (2)(A) for 2009.

"(iii) For services furnished during 2010, the amount shall be equal to the sum of—

"(I) 40 percent of the 2007 ASC payment amount as increased under clauses (i)(I) and (ii)(I) and as further increased by the market basket percentage increase applicable under subsection (t)(3)(C)(iv) for OPD services occurring during the fiscal year ending in such year; and

"(II) 60 percent of the payment amount under paragraph (2)(A) for 2010.

"(iv) For services furnished during 2011, the amount shall be equal to the sum of—

"(I) 20 percent of the 2007 ASC payment amount as increased under clauses (i)(I), (ii)(I), and (iii)(I) and as further increased by the market basket percentage increase applicable under subsection (t)(3)(C)(iv) for OPD services occurring during the fiscal year ending in such year; and

"(II) 80 percent of the payment amount under paragraph (2)(A) for 2011.

"(C) For covered ambulatory surgical center services for which the 2007 ASC payment amount is greater than 75 percent of the hospital OPD fee schedule amount under subsection (t) in 2007 for the same services, the amount of payment under this subsection shall be the greater of the 2007 ASC payment amount or—

"(i) for services furnished in 2008, the payment amount under subparagraph (B)(i);

"(ii) for services furnished in 2009, the payment amount under subparagraph (B)(ii);

"(iii) for services furnished in 2010, the payment amount under subparagraph (B)(iii);

"(iv) for services furnished in 2011, the payment amount under subparagraph (B)(iv); or

"(v) in 2012 and subsequent years, the payment amount under subparagraph (A),

but in no case in excess of the then applicable hospital OPD fee schedule amount.

"(D)(i) Notwithstanding subparagraphs (A), (B), and (C), if a facility service furnished to an individual in an ambulatory surgical center includes an implantable medical device, the amount of payment for that service shall be equal to the sum of—

"(I) 100 percent of the hospital OPD fee schedule amount that the Secretary determines is associated with the device; and

"(II) 75 percent of non-device-related component of the OPD fee schedule amount;

less a 20 percent beneficiary copayment.

"(ii) For purposes of clause (i), the term 'implantable medical device' includes devices that—

"(I) are an integral and subordinate part of the procedure performed;

"(II) are used for 1 patient only;

"(III) are single use;

"(IV) come into contact with human tissue; and

"(V) are surgically implanted or inserted, whether or not the device remains with the patient when the patient is released from the ambulatory surgical center..".

(b) CONFORMING AMENDMENTS.—

(1) Section 1832(a)(2)(F)(i) of such Act (42 U.S.C. 1395k(a)(2)(F)(i)) is amended—

(A) by striking ''section 1833(i)(1)(A)'' and inserting ''section 1833(i)(1)'';

(B) by striking ''the standard overhead amount as determined under section 1833(i)(2)(A)'' and inserting ''the amount determined under section 1833(i)(2)''; and

(C) by striking all that follows ''as full payment for such services'' and inserting '', or''.

(2) Section 1833(a)(1)(G) of such Act (42 U.S.C. 1395l(a)(1)(G)) is amended—

(A) by striking ''subsection (i)(1)(A)'' and inserting ''subsection (i)(1)'';

(B) by striking ''for services furnished beginning'' and all that follows through ''subsection (i)(2)(D)''; and

(C) by striking ''such revised payment system'' and inserting ''under subsection (i)(2)''.

(3) Section 1833(a)(4) of such Act (42 U.S.C. 1395l(a)(4)) is amended—

(A) by striking ''section 1833(i)(1)(A)'' and inserting ''subsection (i)(1)''; and

(B) by striking ''paragraph (2) or (3) of subsection (i)'' and inserting ''subsection (i)(1)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to ambulatory surgical center services furnished on or after January 1, 2008.

SEC. 3. CLARIFYING STATE LICENSURE AUTHORITY.

(a) IN GENERAL.—Section 1832(a)(2)(F)(i) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i)) is amended by inserting '', except that such standards shall not preclude the provision of surgical services to individuals not covered under the program under this part if such services are permitted to be performed in such a center under applicable State licensure laws'' after ''performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

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