

113TH CONGRESS
2D SESSION

S. 2082

To provide for the development of criteria under the Medicare program for medically necessary short inpatient hospital stays, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2014

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

A BILL

To provide for the development of criteria under the Medicare program for medically necessary 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 Coordination and Improvement Act of 2014”.

6 **SEC. 2. DEVELOPMENT OF CRITERIA FOR MEDICALLY NEC-**
7 **CESSARY SHORT INPATIENT HOSPITAL STAYS.**

8 (a) IN GENERAL.—

9 (1) DEVELOPMENT OF CRITERIA.—The Sec-
10 retary shall develop appropriate criteria with regard

1 to the two-midnight rule (as defined in subsection
2 (e)) for payment under the Medicare program under
3 title XVIII of the Social Security Act (42 U.S.C.
4 1395 et seq.) for a short inpatient hospital stay (as
5 defined in such subsection).

6 (2) REQUIREMENTS.—The criteria developed
7 under paragraph (1) shall—

8 (A) account for medical necessity and the
9 appropriateness of an inpatient stay that is less
10 than the two-midnight benchmark; and

11 (B) subject to paragraph (3), be developed
12 in consultation with interested stakeholders.

13 (3) IMPLEMENTATION.—The consultation de-
14 scribed in paragraph (2)(B) shall be conducted as
15 part of the annual notice and comment rulemaking
16 process implementing the Medicare hospital inpa-
17 tient prospective payment system for fiscal year
18 2015.

19 (b) DEVELOPMENT OF SHORT INPATIENT HOSPITAL
20 STAY PAYMENT METHODOLOGY.—

21 (1) IN GENERAL.—The Secretary shall develop
22 a payment methodology under the Medicare program
23 under title XVIII of the Social Security Act for hos-
24 pitals for short inpatient hospital stays. Such meth-
25 odology—

1 (A) shall be implemented in a budget neu-
2 tral manner;

3 (B) may be a reduced payment amount for
4 such inpatient hospital services than would oth-
5 erwise apply if paid for under section 1886(d)
6 of the Social Security Act (42 U.S.C.
7 1395ww(d)) or be an alternative payment meth-
8 odology; and

9 (C) shall take into consideration the cri-
10 teria developed under subsection (a).

11 (2) TIMEFRAME.—The Secretary shall promul-
12 gate such methodology as part of the annual regula-
13 tions implementing the Medicare hospital inpatient
14 prospective payment system for fiscal year 2015.

15 (c) CROSSWALK OF ICD–10 CODES AND CPT
16 CODES; CROSSWALK OF DRG AND CPT CODES.—

17 (1) ICD–10-TO-CPT CROSSWALK.—

18 (A) IN GENERAL.—Not later than 2 years
19 after the date of the enactment of this Act, the
20 Secretary shall develop general equivalency
21 maps (referred to in this subsection as “cross-
22 walks”) to link the relevant ICD–10 codes to
23 relevant CPT codes, and the relevant CPT
24 codes to relevant ICD–10 codes, in order to
25 permit comparisons of inpatient hospital serv-

1 ices, for which payment is made under section
2 1886 of the Social Security Act (42 U.S.C.
3 1395ww), and hospital outpatient department
4 services, for which payment is made under sec-
5 tion 1833(t) of such Act (42 U.S.C. 1395l(t)).
6 In this subsection the terms “ICD–10 codes”
7 and “CPT codes” include procedure as well as
8 diagnostic codes.

9 (B) PROCESS.—

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

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

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

22 (II) A solicitation posted on the
23 Internet Web site of the Centers for
24 Medicare & Medicaid Services.

1 (III) An announcement on the
2 Internet Web site of the Centers for
3 Medicare & Medicaid Services of the
4 availability of the proposed crosswalk
5 and the deadline for comments.

6 (IV) A broadcast through an ap-
7 propriate Listserv operated by the
8 Centers for Medicare & Medicaid
9 Services.

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

17 (iv) PUBLICATION OF FINAL CROSS-
18 WALKS.—Taking into consideration com-
19 ments received on the proposed crosswalk,
20 the Secretary shall publish a final ICD-10-
21 to-CPT crosswalk under subparagraph (A)
22 and shall post such crosswalk on the Inter-
23 net Web site of the Centers for Medicare
24 & Medicaid Services.

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

3 (2) DRG-TO-APC CROSSWALK.—

4 (A) IN GENERAL.—The Secretary shall,
5 using the ICD–10-to-CPT crosswalk developed
6 under paragraph (1), develop a second cross-
7 walk between diagnosis-related group (DRG)
8 codes for inpatient hospital services and Ambu-
9 latory Payment Class (APC) codes for out-
10 patient hospital services.

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

17 (C) PUBLICATION.—Not later than June
18 30, 2017, the Secretary shall publish the DRG-
19 to-APC crosswalk developed under this para-
20 graph.

21 (d) DELAY OF ENFORCEMENT OF THE TWO-MID-
22 NIGHT RULE.—

23 (1) IN GENERAL.—The Secretary shall not en-
24 force the provisions of the two-midnight rule with re-
25 spect to admissions to a hospital for which payment

1 is made under the Medicare program under title
2 XVIII of the Social Security Act—

3 (A) for admissions occurring before Octo-
4 ber 1, 2014; and

5 (B) in the case of admissions occurring on
6 or after October 1, 2014, prior to the applicable
7 date (as defined in paragraph (3)).

8 (2) APPLICATION TO MEDICARE REVIEW CON-
9 TRACTORS.—Paragraph (1) shall also apply to Medi-
10 care review contractors (as defined in subsection
11 (e)). No Medicare review contractor may, based on
12 the provisions of the two-midnight rule, deny a claim
13 for payment for inpatient hospital services furnished
14 by a hospital, or inpatient critical access hospital
15 services furnished by a critical access hospital, for
16 which payment may be made under title XVIII of
17 the Social Security Act for discharges occurring be-
18 fore the applicable date (as defined in paragraph
19 (3))—

20 (A) for medical necessity due to the length
21 of an inpatient stay in such hospital or due to
22 a determination that the services could have
23 been provided on an outpatient basis; or

24 (B) for requirements for orders, certifi-
25 cations, or recertifications, and associated docu-

1 mentation relating to the matters described in
2 subparagraph (A).

3 (3) APPLICABLE DATE DEFINED.—In this sub-
4 section, the term “applicable date” means the earlier
5 of—

6 (A) the date on which the criteria de-
7 scribed in subsection (a) are implemented pur-
8 suant to subsection (a)(3); or

9 (B) October 1, 2015.

10 (4) CONTINUATION OF MEDICARE PROBE AND
11 EDUCATE PROGRAM FOR INPATIENT HOSPITAL AD-
12 MISSIONS.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), nothing in this subsection shall be
15 construed to preclude the Secretary from con-
16 tinuing the conduct by Medicare administrative
17 contractors of the Medicare Probe and Educate
18 program (as defined in subparagraph (C)) for
19 hospital admissions during the delay of enforce-
20 ment under paragraph (1).

21 (B) MAINTENANCE OF SAMPLE PREPAY-
22 MENT RECORD LIMITS.—The Secretary may not
23 increase the sample of claims selected for pre-
24 payment review under the Medicare Probe and
25 Educate program above the number and type

1 established by the Secretary under such pro-
2 gram as of November 4, 2013, such as 10
3 claims for most hospitals and 25 claims for
4 large hospitals.

5 (C) MEDICARE PROBE AND EDUCATE PRO-
6 GRAM DEFINED.—In this paragraph, the term
7 “Medicare Probe and Educate program” means
8 the program established by the Secretary as in
9 effect on November 4, 2013 (and described in
10 a public document made available by the Cen-
11 ters for Medicare & Medicaid Services on its
12 Web site entitled “Frequently Asked Questions
13 2 Midnight Inpatient Admission Guidance &
14 Patient Status Reviews for Admissions on or
15 after October 1, 2013”), under which Medicare
16 administrative contractors—

17 (i) conduct prepayment patient status
18 reviews for inpatient hospital claims with
19 dates of admission on or after October 1,
20 2013, and before March 31, 2014; and

21 (ii) based on the results of such pre-
22 payment patient status reviews, conduct
23 educational outreach efforts during the fol-
24 lowing 3 months.

25 (e) DEFINITIONS.—In this section:

1 (1) HOSPITAL.—The term “hospital” means
2 the following (insofar as such terms are used under
3 title XVIII of the Social Security Act):

4 (A) An acute care hospital.

5 (B) A critical access hospital.

6 (C) A long-term care hospital.

7 (D) An inpatient psychiatric facility.

8 (2) INTERESTED STAKEHOLDERS.—The term
9 “interested stakeholders” means the following:

10 (A) Hospitals.

11 (B) Physicians

12 (C) Medicare administrative contractors
13 under section 1874A of the Social Security Act
14 (42 U.S.C. 1395kk–1).

15 (D) Recovery audit contractors under sec-
16 tion 1893(h) of such Act (42 U.S.C.
17 1395ddd(h)).

18 (E) Other parties determined appropriate
19 by the Secretary.

20 (3) IPPS FY 2014 FINAL RULE.—The term
21 “IPPS FY 2014 Final Rule” means the final rule
22 (CMS–1599–F, CMS–1455–F) published by the
23 Centers for Medicare & Medicaid Services in the
24 Federal Register on August 19, 2013, entitled
25 “Medicare Program; Hospital Inpatient Prospective

1 Payment Systems for Acute Care Hospitals and the
2 Long-Term Care Hospital Prospective Payment Sys-
3 tem and Fiscal Year 2014 Rates; Quality Reporting
4 Requirements for Specific Providers; Hospital Con-
5 ditions of Participation; Payment Policies Related to
6 Patient Status” (78 Fed. Reg. 50496 et seq.).

7 (4) MEDICARE REVIEW CONTRACTOR.—The
8 term “Medicare review contractor” means any con-
9 tractor or entity that has entered into a contract or
10 subcontract with the Centers for Medicare & Med-
11 icaid Services with respect to the Medicare program
12 to review claims for items and services furnished for
13 which payment is made under title XVIII of the So-
14 cial Security Act, including—

15 (A) Medicare administrative contractors
16 under section 1874A of the Social Security Act
17 (42 U.S.C. 1395kk-1); and

18 (B) recovery audit contractors under sec-
19 tion 1893(h) of such Act (42 U.S.C.
20 1395ddd(h)).

21 (5) SECRETARY.—The term “Secretary” means
22 the Secretary of Health and Human Services.

23 (6) SHORT INPATIENT HOSPITAL STAY.—The
24 term “short inpatient hospital stay” means, with re-
25 spect to an inpatient admission of an individual enti-

1 tled to benefits under part A of title XVIII of the
2 Social Security Act to a hospital, a length of stay
3 that is less than the length of stay required to sat-
4 isfy the 2-midnight benchmark described in section
5 412.3 of title 42, Code of Federal Regulations, as
6 amended under the amendment 2 referred to in
7 paragraph (7)(A).

8 (7) TWO-MIDNIGHT RULE.—The term “two-
9 midnight rule” means the following numbered
10 amendments to 42 CFR Chapter IV contained in the
11 IPPS FY 2014 Final Rule (and includes any sub-
12 regulatory guidance issued in the implementation of
13 such amendments and any portion of the preamble
14 of section XI.C. of such rule relating to such amend-
15 ments):

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

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

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

1 (D) Amendment 24 (on pages 50969 and
2 50970), which revises section 424.13 of such
3 title (relating to requirements for inpatient
4 services of hospitals other than inpatient psy-
5 chiatric facilities).

6 (E) Amendment 25 (on page 50970),
7 which revises paragraphs (a), (b), (d)(1), and
8 (e) of section 424.14 of such title (relating to
9 requirements for inpatient services of inpatient
10 psychiatric facilities).

11 (F) Amendment 26 (on page 50970),
12 which revises section 424.15 of such title (relat-
13 ing to requirements for inpatient CAH serv-
14 ices).

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