

110TH CONGRESS  
1ST SESSION

# H. R. 1823

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2007

Mr. MEEK of Florida (for himself, Mr. HERGER, Mr. BISHOP of Georgia, Mr. HALL of Texas, Mr. SAM JOHNSON of Texas, Mr. MILLER of Florida, Mr. ORTIZ, Mr. PAUL, Mr. REYES, Mr. SESSIONS, Mr. SOUDER, Mr. MICHAUD, Mr. LATHAM, Mr. MARCHANT, Mr. LEWIS of Kentucky, and Ms. CORRINE BROWN of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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.

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 “Ambulatory Surgical  
5 Center Medicare Payment Modernization Act of 2007”.

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

3 (a) IN GENERAL.—Section 1833(i) of the Social Se-  
4 curity Act (42 U.S.C. 1395l(i)) is amended to read as fol-  
5 lows:

6 “(i)(1) Payment shall be made under this part in the  
7 amount specified under paragraph (2) for facility services  
8 furnished to an individual in an ambulatory surgical cen-  
9 ter in connection with any outpatient surgical procedure  
10 covered under this part as a hospital outpatient depart-  
11 ment service, except for those procedures that the Sec-  
12 retary designates, in consultation with appropriate trade  
13 and professional organizations (including those having di-  
14 rect experience with ambulatory surgical centers), as pos-  
15 ing a significant safety risk or requiring an overnight stay  
16 when performed in ambulatory surgical centers. Absent an  
17 identifiable safety risk specific to the performance of a  
18 particular procedure in an ambulatory surgical center, the  
19 Secretary shall presume that an outpatient surgical proce-  
20 dure covered under this part as a hospital outpatient de-  
21 partment service does not pose a significant safety risk  
22 when performed in ambulatory surgical centers. Not less  
23 frequently than once every two years the Secretary shall  
24 review and, may, after public comment, make appropriate  
25 adjustments to this list of procedures excluded from cov-

1 erage when performed in ambulatory surgical centers as  
2 the Secretary deems necessary.

3       “(2)(A) Subject to subparagraphs (B) (C), and (D)  
4 the amount of payment to be made under this subsection  
5 for facility services furnished to an individual in an ambu-  
6 latory surgical center in accordance with paragraph (1)  
7 shall be equal to 75 percent of the fee schedule amount  
8 determined under paragraph (3)(A) of subsection (t) for  
9 payment of the same service furnished in hospital out-  
10 patient departments, as adjusted under paragraphs  
11 (4)(A), (6), and (15) of such subsection, less a 20 percent  
12 beneficiary copayment.

13       “(B) For covered ambulatory surgical center services  
14 furnished on or after January 1, 2008, and before Janu-  
15 ary 1, 2012, for which the ambulatory surgical center pay-  
16 ment amount payable under this subsection in 2007 (in  
17 this subsection referred to as the ‘2007 ASC payment  
18 amount’) is less than 75 percent of the hospital OPD fee  
19 schedule amount under subsection (t) in 2007 for the  
20 same services, the amount of payment under this sub-  
21 section shall be calculated as follows:

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

24                       “(I) 80 percent of the 2007 ASC payment  
25 amount, as increased by the market basket per-

1           centage increase applicable under subsection  
2           (t)(3)(C)(iv) for OPD services occurring during  
3           the fiscal year ending in such year; and

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

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

8                   “(I) 60 percent of the 2007 ASC payment  
9           amount as increased under clause (i)(I) and as  
10          further increased by the market basket percent-  
11          age increase applicable under subsection  
12          (t)(3)(C)(iv) for OPD services occurring during  
13          the fiscal year ending in such year; and

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

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

18                   “(I) 40 percent of the 2007 ASC payment  
19          amount as increased under clauses (i)(I) and  
20          (ii)(I) and as further increased by the market  
21          basket percentage increase applicable under  
22          subsection (t)(3)(C)(iv) for OPD services occur-  
23          ring during the fiscal year ending in such year;  
24          and

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

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

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

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

14           “(C) For covered ambulatory surgical center services  
15           for which the 2007 ASC payment amount is—

16                   “(i) greater than 75 percent, but less than 100  
17                   percent, of the hospital OPD fee schedule amount  
18                   under subsection (t) in 2007 for the same services,  
19                   the amount of payment under this subsection shall  
20                   be the greater of the 2007 ASC payment amount  
21                   or—

22                   “(I) for services furnished in 2008, the  
23                   payment amount under subparagraph (B)(i);

24                   “(II) for services furnished in 2009, the  
25                   payment amount under subparagraph (B)(ii);

1           “(III) for services furnished in 2010, the  
2           payment amount under subparagraph (B)(iii);

3           “(IV) for services furnished in 2011, the  
4           payment amount under subparagraph (B)(iv);  
5           or

6           “(V) in 2012 and subsequent years, the  
7           payment amount under subparagraph (A),  
8           but in no case in excess of the then applicable hos-  
9           pital OPD fee schedule amount; or

10          “(ii) greater than the hospital OPD fee sched-  
11          ule amount under subsection (t) in 2007 for the  
12          same services, the amount of payment under this  
13          subsection—

14               “(I) for services furnished during 2008, is  
15               equal to the midpoint between the 2007 ASC  
16               payment amount and 100 percent of such 2007  
17               hospital OPD fee schedule amount; or

18               “(II) for services furnished in a subsequent  
19               year is equal to the greater of the 2007 hospital  
20               OPD fee schedule amount or the payment  
21               amount specified under subclause (I) through  
22               (V) of clause (i) for the year involved, but in no  
23               case in excess of the then applicable hospital  
24               OPD fee schedule amount.

1           “(D) Notwithstanding subparagraphs (A), (B),  
2           and (C), if a facility service furnished to an indi-  
3           vidual in an ambulatory surgical center includes an  
4           implantable medical device, the amount of payment  
5           for that service shall be equal to the sum of—

6                   “(i) 100 percent of the hospital OPD fee  
7                   schedule amount that the Secretary determines  
8                   is associated with the device; and

9                   “(ii) 75 percent of non-device-related com-  
10                  ponent of the OPD fee schedule amount;

11           less a 20 percent beneficiary copayment.”.

12           (b) CONFORMING AMENDMENTS.—

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

15                           (A) by striking “section 1833(i)(1)(A)”  
16                           and inserting “section 1833(i)(1)”;

17                           (B) by striking “the standard overhead  
18                           amount as determined under section  
19                           1833(i)(2)(A)” and inserting “the amount de-  
20                           termined under section 1833(i)(2)”;

21                           (C) by striking all that follows “as full  
22                           payment for such services” and inserting “,  
23                           or”.

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

1 (A) by striking “subsection (i)(1)(A)” and  
2 inserting “subsection (i)(1)”;

3 (B) by striking “for services furnished be-  
4 ginning” and all that follows through “sub-  
5 section (i)(2)(D)”;

6 (C) by striking “such revised payment sys-  
7 tem” and inserting “under subsection (i)(2)”.

8 (3) Section 1833(a)(4) of such Act (42 U.S.C.  
9 13951(a)(4)) is amended—

10 (A) by striking “section 1833(i)(1)(A)”  
11 and inserting “subsection (i)(1)”;

12 (B) by striking “paragraph (2) or (3) of  
13 subsection (i)” and inserting “subsection  
14 (i)(1)”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to ambulatory surgical center serv-  
17 ices furnished on or after January 1, 2008.

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