

113TH CONGRESS
2D SESSION

S. _____

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

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

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.—

1 (1) DEVELOPMENT OF CRITERIA.—The Sec-
2 retary shall develop appropriate criteria with regard
3 to the two-midnight rule (as defined in subsection
4 (e)) for payment under the Medicare program under
5 title XVIII of the Social Security Act (42 U.S.C.
6 1395 et seq.) for a short inpatient hospital stay (as
7 defined in such subsection).

8 (2) REQUIREMENTS.—The criteria developed
9 under paragraph (1) shall—

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

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

15 (3) IMPLEMENTATION.—The consultation de-
16 scribed in paragraph (2)(B) shall be conducted as
17 part of the annual notice and comment rulemaking
18 process implementing the Medicare hospital inpa-
19 tient prospective payment system for fiscal year
20 2015.

21 (b) DEVELOPMENT OF SHORT INPATIENT HOSPITAL
22 STAY PAYMENT METHODOLOGY.—

23 (1) IN GENERAL.—The Secretary shall develop
24 a payment methodology under the Medicare program
25 under title XVIII of the Social Security Act for hos-

1 pitals for short inpatient hospital stays. Such meth-
2 odology—

3 (A) shall be implemented in a budget neu-
4 tral manner;

5 (B) may be a reduced payment amount for
6 such inpatient hospital services than would oth-
7 erwise apply if paid for under section 1886(d)
8 of the Social Security Act (42 U.S.C.
9 1395ww(d)) or be an alternative payment meth-
10 odology; and

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

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

17 (c) CROSSWALK OF ICD–10 CODES AND CPT
18 CODES; CROSSWALK OF DRG AND CPT CODES.—

19 (1) ICD10–TO–CPT CROSSWALK.—

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

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

11 (B) PROCESS.—

12 (i) IN GENERAL.—In carrying out
13 subparagraph (A), the Secretary shall de-
14 velop a proposed ICD10–to–CPT crosswalk
15 which shall be made available for public
16 comment for a period of not less than 60
17 days.

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

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

1 (II) A solicitation posted on the
2 Internet website of the Centers for
3 Medicare & Medicaid Services.

4 (III) An announcement on the
5 Internet website of the Centers for
6 Medicare & Medicaid Services of the
7 availability of the proposed crosswalk
8 and the deadline for comments.

9 (IV) A broadcast through an ap-
10 propriate Listserv operated by the
11 Centers for Medicare & Medicaid
12 Services.

13 (iii) USE OF THE ICD-9-CM COORDI-
14 NATION AND MAINTENANCE COMMITTEE.—
15 The Secretary also shall instruct the ICD-
16 9-CM Coordination and Maintenance
17 Committee to convene a meeting to receive
18 input from the public regarding the pro-
19 posed ICD10-to-CPT crosswalk.

20 (iv) PUBLICATION OF FINAL CROSS-
21 WALKS.—Taking into consideration com-
22 ments received on the proposed crosswalk,
23 the Secretary shall publish a final ICD10-
24 to-CPT crosswalk under subparagraph (A)
25 and shall post such crosswalk on the Inter-

1 net Website of the Centers for Medicare &
2 Medicaid Services.

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

5 (2) DRG-TO-APC CROSSWALK.—

6 (A) IN GENERAL.—The Secretary shall,
7 using the ICD10-to-CPT crosswalk developed
8 under paragraph (1), develop a second cross-
9 walk between diagnosis-related group (DRG)
10 codes for inpatient hospital services and Ambu-
11 latory Payment Class (APC) codes for out-
12 patient hospital services.

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

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

23 (d) DELAY OF ENFORCEMENT OF THE TWO-MID-
24 NIGHT RULE.—

1 (1) IN GENERAL.—The Secretary shall not en-
2 force the provisions of the two-midnight rule with re-
3 spect to admissions to a hospital for which payment
4 is made under the Medicare program under title
5 XVIII of the Social Security Act—

6 (A) for admissions occurring before Octo-
7 ber 1, 2014; and

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

11 (2) APPLICATION TO MEDICARE REVIEW CON-
12 TRACTORS.—Paragraph (1) shall also apply to Medi-
13 care review contractors (as defined in subsection
14 (e)). No Medicare review contractor may, based on
15 the provisions of the two-midnight rule, deny a claim
16 for payment for inpatient hospital services furnished
17 by a hospital, or inpatient critical access hospital
18 services furnished by a critical access hospital, for
19 which payment may be made under title XVIII of
20 the Social Security Act for discharges occurring be-
21 fore the applicable date (as defined in paragraph
22 (3))—

23 (A) for medical necessity due to the length
24 of an inpatient stay in such hospital or due to

1 a determination that the services could have
2 been provided on an outpatient basis; or

3 (B) for requirements for orders, certifi-
4 cations, or recertifications, and associated docu-
5 mentation relating to the matters described in
6 subparagraph (A).

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

10 (A) the date on which the criteria de-
11 scribed in subsection (a) are implemented pur-
12 suant to subsection (a)(3); or

13 (B) October 1, 2015.

14 (4) CONTINUATION OF MEDICARE PROBE AND
15 EDUCATE PROGRAM FOR INPATIENT HOSPITAL AD-
16 MISSIONS.—

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

1 (B) MAINTENANCE OF SAMPLE PREPAY-
2 MENT RECORD LIMITS.—The Secretary may not
3 increase the sample of claims selected for pre-
4 payment review under the Medicare Probe and
5 Educate program above the number and type
6 established by the Secretary under such pro-
7 gram as of November 4, 2013, such as 10
8 claims for most hospitals and 25 claims for
9 large hospitals.

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

22 (i) conduct prepayment patient status
23 reviews for inpatient hospital claims with
24 dates of admission on or after October 1,
25 2013, and before March 31, 2014; and

1 (ii) based on the results of such pre-
2 payment patient status reviews, conduct
3 educational outreach efforts during the fol-
4 lowing 3 months.

5 (e) DEFINITIONS.—In this section:

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

9 (A) An acute care hospital.

10 (B) A critical access hospital.

11 (C) A long-term care hospital.

12 (D) An inpatient psychiatric facility.

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

15 (A) Hospitals.

16 (B) Physicians

17 (C) Medicare administrative contractors
18 under section 1874A of the Social Security Act
19 (42 U.S.C. 1395kk–1).

20 (D) Recovery audit contractors under sec-
21 tion 1893(h) of such Act (42 U.S.C.
22 1395ddd(h)).

23 (E) Other parties determined appropriate
24 by the Secretary.

1 (3) IPPS FY 2014 FINAL RULE.—The term
2 “IPPS FY 2014 Final Rule” means the final rule
3 (CMS–1599–F, CMS–1455–F) published by the
4 Centers for Medicare & Medicaid Services in the
5 Federal Register on August 19, 2013, entitled
6 “Medicare Program; Hospital Inpatient Prospective
7 Payment Systems for Acute Care Hospitals and the
8 Long-Term Care Hospital Prospective Payment Sys-
9 tem and Fiscal Year 2014 Rates; Quality Reporting
10 Requirements for Specific Providers; Hospital Con-
11 ditions of Participation; Payment Policies Related to
12 Patient Status” (78 Federal Register 50496 et
13 seq.).

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

22 (A) Medicare administrative contractors
23 under section 1874A of the Social Security Act
24 (42 U.S.C. 1395kk–1); and

1 (B) recovery audit contractors under sec-
2 tion 1893(h) of such Act (42 U.S.C.
3 1395ddd(h)).

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

6 (6) SHORT INPATIENT HOSPITAL STAY.—The
7 term “short inpatient hospital stay” means, with re-
8 spect to an inpatient admission of an individual enti-
9 tled to benefits under part A of title XVIII of the
10 Social Security Act to a hospital, a length of stay
11 that is less than the length of stay required to sat-
12 isfy the 2-midnight benchmark described in section
13 412.3 of title 42, Code of Federal Regulation, as
14 amended under the Amendment 2 referred to in
15 paragraph (7)(A).

16 (7) TWO-MIDNIGHT RULE.—The term “two-
17 midnight rule” means the following numbered
18 amendments to 42 CFR Chapter IV contained in the
19 IPPS FY 2014 Final Rule (and includes any sub-
20 regulatory guidance issued in the implementation of
21 such amendments and any portion of the preamble
22 of section XI.C. of such rule relating to such amend-
23 ments):

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

4 (B) Amendment 3 (on page 50965), which
5 revises section 412.46 of such title (relating to
6 medical review requirements).

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

11 (D) Amendment 24 (on pages 50969 and
12 50970), which revises section 424.13 of such
13 title (relating to requirements for inpatient
14 services of hospitals other than inpatient psy-
15 chiatric facilities).

16 (E) Amendment 25 (on page 50970),
17 which revises paragraphs (a), (b), (d)(1), and
18 (e) of section 424.14 of such title (relating to
19 requirements for inpatient services of inpatient
20 psychiatric facilities).

21 (F) Amendment 26 (on page 50970),
22 which revises section 424.15 of such title (relat-
23 ing to requirements for inpatient CAH serv-
24 ices).