

112TH CONGRESS  
2D SESSION

# H. R. 5284

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2012

Mr. REICHERT (for himself and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

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 “Medicare Secondary  
5 Payer and Workers’ Compensation Settlement Agree-  
6 ments Act of 2012”.

1 **SEC. 2. APPLICATION OF MEDICARE SECONDARY PAYER**  
 2 **RULES TO CERTAIN WORKERS' COMPENSA-**  
 3 **TION SETTLEMENT AGREEMENTS AND**  
 4 **QUALIFIED MEDICARE SET-ASIDE PROVI-**  
 5 **SIONS.**

6 (a) THRESHOLD FOR SECONDARY PAYER PROVI-  
 7 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-  
 8 MENT AGREEMENTS.—Section 1862 of the Social Security  
 9 Act (42 U.S.C. 1395y) is amended—

10 (1) in subsection (b)(2)(A)(ii), by inserting  
 11 “subject to subsection (p),” after “(ii)”; and

12 (2) by adding at the end the following new sub-  
 13 section:

14 “(p) THRESHOLD FOR SECONDARY PAYER PROVI-  
 15 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-  
 16 MENT AGREEMENTS.—

17 “(1) IN GENERAL.—A workers' compensation  
 18 law or plan shall not be treated as a primary plan  
 19 for purposes of subsection (b) with respect to a  
 20 workers' compensation settlement agreement if the  
 21 agreement (or claimant under the agreement) is de-  
 22 scribed in any of the following subparagraphs:

23 “(A) TOTAL SETTLEMENT AMOUNT NOT  
 24 EXCEEDING \$25,000.—The agreement has a  
 25 total settlement amount (as determined under  
 26 paragraph (2)) that does not exceed \$25,000 or

1           such greater amount as the Secretary may  
2           specify in regulations.

3           “(B) LIKELY INELIGIBILITY OF WORKERS’  
4           COMPENSATION CLAIMANT FOR MEDICARE BEN-  
5           EFITS.—The claimant under the agreement—

6                   “(i) is not eligible for benefits under  
7                   this title as of the effective date of the  
8                   agreement; and

9                   “(ii) is unlikely to become so eligible,  
10                  as determined under paragraph (3), within  
11                  30 months after such effective date.

12           “(C) NO FUTURE MEDICAL EXPENSES.—  
13           The claimant under the agreement is not eligi-  
14           ble for payment of medical expenses, incurred  
15           after the effective date of the agreement, that  
16           are available under the workers’ compensation  
17           law or plan of the jurisdiction in which such  
18           agreement will be effective.

19           “(D) NO LIMITATION ON FUTURE MEDICAL  
20           EXPENSES.—The agreement does not limit or  
21           extinguish the right of the claimant involved to  
22           payment of medical expenses, incurred after the  
23           effective date of such agreement, that are avail-  
24           able under the workers’ compensation law or

1 plan of the jurisdiction in which the agreement  
2 will be effective.

3 “(2) DETERMINATION OF TOTAL SETTLEMENT  
4 AMOUNT OF WORKERS’ COMPENSATION SETTLE-  
5 MENT AGREEMENT.—For purposes of paragraph  
6 (1)(A) and subsection (q) and with respect to a  
7 work-related injury or illness that is the subject of  
8 a workers’ compensation settlement agreement, the  
9 total settlement amount of the agreement is the sum  
10 of monetary wage replacement benefits, attorney  
11 fees, all future medical expenses, repayment of Medi-  
12 care conditional payments, payout totals for annu-  
13 ities to fund the expenses listed above, and any pre-  
14 viously settled portion of the workers’ compensation  
15 claim.

16 “(3) DETERMINATION OF LIKELY INELIGI-  
17 BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—  
18 For purposes of paragraph (1)(B)(ii), a workers’  
19 compensation claimant shall be deemed unlikely to  
20 become eligible for benefits under this title within 30  
21 months after the effective date of the agreement un-  
22 less, as of the effective date of the agreement, such  
23 claimant is insured, as determined under subsection  
24 (c)(1) of section 223, for disability insurance bene-

1 fits under such section and is described in any of the  
2 following subparagraphs:

3 “(A) AWARDED DISABILITY BENEFITS.—  
4 The individual has been awarded such disability  
5 insurance benefits.

6 “(B) APPLIED FOR DISABILITY.—The indi-  
7 vidual has applied for such disability insurance  
8 benefits.

9 “(C) ANTICIPATES APPEAL.—The indi-  
10 vidual has been denied such disability insurance  
11 benefits but anticipates appealing that decision.

12 “(D) APPEALING OR REFILING.—The indi-  
13 vidual is in the process of appealing or refiling  
14 for such disability insurance benefits.

15 “(E) MINIMUM AGE.—The individual is at  
16 least 62 years and 6 months of age.

17 “(F) END-STAGE RENAL DISEASE.—The  
18 individual has an end-stage renal disease condi-  
19 tion but does not yet qualify for health benefits  
20 under section 226A based on such disease.

21 “(4) DEFINITIONS.—For purposes of this sub-  
22 section and subsection (q):

23 “(A) COMPROMISE AGREEMENT.—The  
24 term ‘compromise agreement’ means a workers’  
25 compensation settlement agreement that—

1 “(i) applies to a workers’ compensa-  
2 tion claim that is denied or contested, in  
3 whole or in part, by a workers’ compensa-  
4 tion payer involved under the workers’  
5 compensation law or plan applicable to the  
6 jurisdiction in which the agreement has  
7 been settled; and

8 “(ii) does not provide for a payment  
9 of the full amount of benefits sought or  
10 that may be payable under the workers’  
11 compensation claim.

12 “(B) COMMUTATION AGREEMENT.—The  
13 term ‘commutation agreement’ means a work-  
14 ers’ compensation settlement agreement to set-  
15 tle all or a portion of a workers’ compensation  
16 claim, in which—

17 “(i) liability for past and future bene-  
18 fits is not disputed; and

19 “(ii) the parties to the agreement  
20 agree to include payment for future work-  
21 ers’ compensation benefits payable after  
22 the date on which the agreement becomes  
23 effective.

1 “(C) WORKERS’ COMPENSATION CLAIM-  
2 ANT.—The term ‘workers’ compensation claim-  
3 ant’ means a worker who—

4 “(i) is or may be covered under a  
5 workers’ compensation law or plan; and

6 “(ii) submits a claim or accepts bene-  
7 fits under such law or plan for a work-re-  
8 lated injury or illness.

9 “(D) WORKERS’ COMPENSATION LAW OR  
10 PLAN.—

11 “(i) IN GENERAL.—The term ‘work-  
12 ers’ compensation law or plan’ means a  
13 law or program administered by a State or  
14 the United States to provide compensation  
15 to workers for a work-related injury or ill-  
16 ness (or for disability or death caused by  
17 such an injury or illness), including the  
18 Longshore and Harbor Workers’ Com-  
19 pensation Act (33 U.S.C. 901–944, 948–  
20 950), chapter 81 of title 5, United States  
21 Code (known as the Federal Employees  
22 Compensation Act), the Black Lung Bene-  
23 fits Act (30 U.S.C. 931 et seq.), and part  
24 C of title 4 of the Federal Coal Mine and  
25 Safety Act (30 U.S.C. 901 et seq.), but not

1 including the Act of April 22, 1908 (45  
2 U.S.C. 51 et seq.) (popularly referred to as  
3 the Federal Employer’s Liability Act).

4 “(ii) INCLUSION OF SIMILAR COM-  
5 PENSATION PLAN.—Such term includes a  
6 similar compensation plan established by  
7 an employer that is funded by such em-  
8 ployer or the insurance carrier of such em-  
9 ployer to provide compensation to a worker  
10 of such employer for a work-related injury  
11 or illness.

12 “(E) WORKERS’ COMPENSATION PAYER.—  
13 The term ‘workers’ compensation payer’ means,  
14 with respect to a workers’ compensation law or  
15 plan, a workers’ compensation insurer, self-in-  
16 surer, employer, individual, or any other entity  
17 that is or may be liable for the payment of ben-  
18 efits to a workers’ compensation claimant pur-  
19 suant to the workers’ compensation law or plan.

20 “(F) WORKERS’ COMPENSATION SETTLE-  
21 MENT AGREEMENT.—The term ‘workers’ com-  
22 pensation settlement agreement’ means an  
23 agreement, including a commutation agreement  
24 or compromise agreement, or any combination  
25 of both, between a workers’ compensation



1 claimant and one or more workers' compensa-  
 2 tion payers which is intended—

3 “(i) to foreclose the possibility of fu-  
 4 ture payment of some or all workers' com-  
 5 pensation benefits involved; and

6 “(ii)(I) to compensate the claimant  
 7 for a work-related injury or illness as pro-  
 8 vided for by a workers' compensation law  
 9 or plan; or

10 “(II) to eliminate cause for litigation  
 11 involving issues in dispute between the  
 12 claimant and payer.”.

13 (b) SATISFACTION OF SECONDARY PAYER REQUIRE-  
 14 MENTS THROUGH USE OF QUALIFIED MEDICARE SET-  
 15 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT  
 16 AGREEMENTS.—Such section is further amended by add-  
 17 ing at the end the following new subsection:

18 “(q) TREATMENT OF QUALIFIED MEDICARE SET-  
 19 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT  
 20 AGREEMENTS.—

21 “(1) SATISFACTION OF SECONDARY PAYER RE-  
 22 QUIREMENTS THROUGH USE OF QUALIFIED MEDI-  
 23 CARE SET-ASIDES.—

24 “(A) FULL SATISFACTION OF CLAIM OBLI-  
 25 GATIONS.—

1           “(i) IN GENERAL.—If a workers’ com-  
2           pensation settlement agreement, related to  
3           a claim of a workers’ compensation claim-  
4           ant, includes a qualified Medicare set-aside  
5           (as defined in paragraph (2)), such set-  
6           aside shall satisfy any obligation with re-  
7           spect to the present or future payment re-  
8           imbursement under subsection (b)(2) with  
9           respect to such claim. The Secretary shall  
10          have no further recourse, directly or indi-  
11          rectly, under this title with respect to such  
12          agreement.

13          “(ii) RULE OF CONSTRUCTION.—  
14          Nothing in this section shall be construed  
15          as requiring the submission of a Medicare  
16          set-aside to the Secretary.

17          “(B) MEDICARE SET-ASIDE AND MEDI-  
18          CARE SET-ASIDE AMOUNT DEFINED.—For pur-  
19          poses of this subsection:

20               “(i) MEDICARE SET-ASIDE.—The  
21               term ‘Medicare set-aside’ means, with re-  
22               spect to a workers’ compensation settle-  
23               ment agreement, a provision in the agree-  
24               ment that provides for a payment of a  
25               lump sum, annuity, a combination of a

1 lump sum and an annuity, or other  
2 amount that is in full satisfaction of the  
3 obligation described in subparagraph (A)  
4 for items and services that the workers'  
5 compensation claimant under the agree-  
6 ment received or is likely to receive under  
7 the applicable workers' compensation law  
8 and for which payment would be made  
9 under this title, but for subsection  
10 (b)(2)(A).

11 “(ii) MEDICARE SET-ASIDE  
12 AMOUNT.—The term ‘Medicare set-aside  
13 amount’ means, with respect to a Medicare  
14 set-aside, the amount described in clause  
15 (i).

16 “(2) QUALIFIED MEDICARE SET-ASIDE.—

17 “(A) REQUIREMENTS OF QUALIFIED MEDI-  
18 CARE SET-ASIDE.—For purposes of this sub-  
19 section, the term ‘qualified Medicare set-aside’  
20 is a Medicare set-aside in which the Medicare  
21 set-aside amount reasonably takes into account  
22 the full payment obligation described in para-  
23 graph (1)(A), while meeting the requirements of  
24 subparagraphs (B) and (C) and giving due con-  
25 sideration to the following:

1           “(i) The illness or injury giving rise to  
2           the workers’ compensation claim involved.

3           “(ii) The age and life expectancy of  
4           the claimant involved.

5           “(iii) The reasonableness of and ne-  
6           cessity for future medical expenses for  
7           treatment of the illness or injury involved.

8           “(iv) The duration of and limitation  
9           on benefits payable under the workers’  
10          compensation law or plan involved.

11          “(v) The regulations and case law rel-  
12          evant to the State workers’ compensation  
13          law or plan involved.

14          “(B) ITEMS AND SERVICES INCLUDED.—A  
15          qualified Medicare set-aside—

16               “(i) shall include payment for items  
17               and services that are authorized for pay-  
18               ment under this title as of the effective  
19               date of the workers’ compensation settle-  
20               ment agreement involved and that are cov-  
21               ered by the workers’ compensation law or  
22               plan involved; and

23               “(ii) is not required to provide for  
24               payment for items and services that are  
25               not described in clause (i).

1 “(C) PAYMENT REQUIREMENTS.—

2 “(i) REQUIRED USE OF WORKERS’  
3 COMPENSATION FEE SCHEDULE.—

4 “(I) IN GENERAL.—Except in the  
5 case of an optional direct payment of  
6 a Medicare set-aside made under  
7 paragraph (5)(A), the set-aside  
8 amount shall be based upon the pay-  
9 ment amount for items and services  
10 under the workers’ compensation fee  
11 schedule (effective as of the date of  
12 the agreement) applicable to the work-  
13 ers’ compensation law or plan in-  
14 volved.

15 “(II) WORKERS’ COMPENSATION  
16 FEE SCHEDULE DEFINED.—For pur-  
17 poses of this subsection, the term  
18 ‘workers’ compensation fee schedule’  
19 means, with respect to a workers’  
20 compensation law or plan of a State  
21 or a similar plan applicable in a State,  
22 the schedule of payment amounts the  
23 State has established to pay providers  
24 for items and services furnished to  
25 workers who incur a work-related in-

1 jury or illness as defined under such  
2 law or plan (or in the absence of such  
3 a schedule, the applicable medical re-  
4 imbursement rate under such law or  
5 plan).

6 “(ii) OPTIONAL PROPORTIONAL AD-  
7 JUSTMENT FOR COMPROMISE SETTLEMENT  
8 AGREEMENTS.—

9 “(I) IN GENERAL.—In the case  
10 of a compromise settlement agree-  
11 ment, a workers’ compensation claim-  
12 ant or workers’ compensation payer  
13 who is party to the agreement may  
14 elect (but is not required) to calculate  
15 the Medicare set-aside amount of the  
16 agreement by applying a percentage  
17 reduction to the Medicare set-aside  
18 amount for the total settlement  
19 amount that could have been payable  
20 under the applicable workers’ com-  
21 pensation law or similar plan involved  
22 had the denied or contested portion of  
23 the claim not been subject to a com-  
24 promise agreement. The percentage  
25 reduction shall be equal to the denied

1 or contested percentage of such total  
2 settlement. Such election may be  
3 made by a party to the agreement  
4 only with the written consent of the  
5 other party to the agreement.

6 “(II) APPLICATION.—If the  
7 workers’ compensation claimant or  
8 workers’ compensation payer elects to  
9 calculate the Medicare set-aside  
10 amount under this clause, the Medi-  
11 care set-aside shall be deemed a quali-  
12 fied Medicare set-aside.

13 “(D) CERTAIN MEDICARE SET-ASIDES  
14 WITH SAFE HARBOR AMOUNT DEEMED QUALI-  
15 FIED MEDICARE SET-ASIDES.—

16 “(i) IN GENERAL.—For purposes of  
17 this section and subject to clause (iv), a  
18 Medicare set-aside of a workers’ compensa-  
19 tion settlement agreement shall be deemed  
20 a qualified Medicare set-aside if the Medi-  
21 care set-aside amount involved is the safe  
22 harbor amount for the agreement and the  
23 agreement does not exceed \$250,000.

24 “(ii) WRITTEN CONSENT.—A safe  
25 harbor amount, with respect to a workers’

1 compensation agreement, shall be treated  
2 as the Medicare set-aside amount for such  
3 agreement for purposes of clause (i) only  
4 upon written consent of all parties to the  
5 agreement.

6 “(iii) SAFE HARBOR AMOUNT DE-  
7 FINED.—For purposes of this subsection,  
8 the term ‘safe harbor amount’ means, with  
9 respect to a workers’ compensation settle-  
10 ment agreement, 15 percent of the total  
11 settlement amount of the agreement (as  
12 determined under subsection (p)(2)), ex-  
13 cluding repayment of conditional payments  
14 and previously settled portions of the claim  
15 involved. In applying the previous sentence  
16 for purposes of determining the safe har-  
17 bor amount, with respect to a workers’  
18 compensation agreement, if the agreement  
19 includes an annuity, the cost (but not the  
20 payout of the annuity) shall be included in  
21 determining the total settlement amount of  
22 the agreement.

23 “(iv) MANDATORY DIRECT PAYMENT  
24 OF SAFE HARBOR AMOUNT.—A Medicare  
25 set-aside of a worker’s compensation settle-



1           ment agreement may not be treated as a  
2           qualified set-aside under clause (i) unless  
3           an election is made under paragraph  
4           (5)(A) to transfer to the Secretary a direct  
5           payment of such set-aside.

6           “(E) SECRETARIAL AUTHORITY WITH RE-  
7           SPECT TO DEEMED QUALIFIED MEDICARE SET-  
8           ASIDES.—

9           “(i) DETERMINATION.—If the Sec-  
10          retary determines, based on the data de-  
11          scribed in clause (ii), that the provisions of  
12          subparagraph (D) have caused a signifi-  
13          cant negative financial impact (as specified  
14          by the Chief Actuary of the Centers for  
15          Medicare & Medicaid Services) on the Fed-  
16          eral Hospital Insurance Trust Fund under  
17          section 1817 or the Federal Supplementary  
18          Medical Insurance Trust Fund under sec-  
19          tion 1841, then the Secretary shall adopt  
20          rules to reduce such impact by modifying  
21          the amount of the percent described in  
22          subparagraph (D)(iii).

23          “(ii) REQUIRED DATA.—The deter-  
24          mination under clause (i) shall be based on  
25          data on—

1                   “(I) the projected effect of the  
 2                   provisions described in such para-  
 3                   graph on the Federal Hospital Insur-  
 4                   ance Trust Fund under section 1817  
 5                   or the Federal Supplementary Medical  
 6                   Insurance Trust Fund under section  
 7                   1841 during the three-year period be-  
 8                   ginning on the date of the enactment  
 9                   of this subsection; as compared to

10                   “(II) data on the effect on such  
 11                   trust funds of the provisions of sub-  
 12                   section (b), as in effect during the  
 13                   three-year period prior to such date of  
 14                   enactment.

15                   “(3) PROCESS FOR APPROVAL OF QUALIFIED  
 16                   MEDICARE SET-ASIDES.—

17                   “(A) OPTIONAL PRIOR APPROVAL BY SEC-  
 18                   RETARY.—A party to a workers’ compensation  
 19                   settlement agreement that includes a Medicare  
 20                   set-aside may submit to the Secretary the set-  
 21                   aside for approval of the set-aside as a qualified  
 22                   Medicare set-aside. The set-aside shall be sub-  
 23                   mitted in accordance with a procedure specified  
 24                   by the Secretary.

“(B) NOTICE OF DETERMINATION OF APPROVAL OR DISAPPROVAL.—Not later than 60 days after the date on which the Secretary receives a submission under subparagraph (A), the Secretary shall notify in writing the parties to the workers’ compensation settlement agreement of the determination of approval or disapproval. If the determination disapproves such submission the Secretary shall include with such notification the specific reasons for the disapproval. A determination that disapproves a submission is not valid if the determination does not include a specific explanation of each deficiency of the submission.

“(4) APPEALS.—

“(A) IN GENERAL.—A party to a workers’ compensation settlement agreement that is dissatisfied with a determination under paragraph (3)(B), upon filing a request for reconsideration with the Secretary not later than 60 days after the date of notice of such determination, shall be entitled to—

“(i) reconsideration of the determination by the Secretary (with respect to such determination);

1 “(ii) a hearing before an administra-  
2 tive judge thereon; and

3 “(iii) judicial review of the Secretary’s  
4 final determination after such hearing.

5 “(B) DEADLINES FOR DECISIONS.—

6 “(i) RECONSIDERATIONS.—

7 “(I) IN GENERAL.—The Sec-  
8 retary shall conduct and conclude a  
9 reconsideration of a determination  
10 under subparagraph (A)(i) and mail  
11 the notice of the decision of such re-  
12 consideration to the party involved by  
13 not later than the last day of the 30-  
14 day period beginning on the date that  
15 a request for such reconsideration has  
16 been timely filed.

17 “(II) APPEALS OF RECONSIDER-  
18 ATIONS.—If a party to the workers’  
19 compensation settlement involved is  
20 dissatisfied with the Secretary’s deci-  
21 sion under subclause (I) that party  
22 may file an appeal within the 30-day  
23 period after the date of receipt of the  
24 notice of the decision under such sub-

1 clause and request a hearing before  
2 an administrative law judge.

3 “(III) FAILURE BY SECRETARY  
4 TO PROVIDE NOTICE.—In the case of  
5 a failure by the Secretary to mail the  
6 notice of the decision under subclause  
7 (I) by the last day of the period de-  
8 scribed in such subclause, the Sec-  
9 retary shall be deemed to have ap-  
10 proved the submission as submitted  
11 under paragraph (3)(A).

12 “(ii) HEARINGS.—

13 “(I) IN GENERAL.—An adminis-  
14 trative law judge shall conduct and  
15 conclude a hearing on a decision of  
16 the Secretary under clause (i) and  
17 render a decision on such hearing by  
18 not later than the last day of the 90-  
19 day period beginning on the date that  
20 a request for such hearing has been  
21 timely filed.

22 “(II) JUDICIAL REVIEW.—A deci-  
23 sion under subclause (I) by an admin-  
24 istrative law judge constitutes a final

1 agency action and is subject to judi-  
2 cial review.

3 “(III) FAILURE BY ADMINISTRA-  
4 TIVE LAW JUDGE TO RENDER TIMELY  
5 DECISION.—In the case of a failure by  
6 an administrative law judge to render  
7 a decision under subclause (I) by the  
8 last day of the period described in  
9 such subclause, the party requesting  
10 the hearing may seek judicial review  
11 of the decision under clause (i), not-  
12 withstanding any requirements for a  
13 hearing for purposes of the party’s  
14 right to such judicial review.

15 “(5) ADMINISTRATION OF MEDICARE SET-ASIDE  
16 PROVISIONS; PROTECTION FROM CERTAIN LIABIL-  
17 ITY.—

18 “(A) OPTIONAL DIRECT PAYMENT OF  
19 MEDICARE SET-ASIDE AMOUNT.—

20 “(i) ELECTION FOR DIRECT PAYMENT  
21 OF MEDICARE SET-ASIDE.—With respect to  
22 a claim for which a workers’ compensation  
23 settlement agreement is established, a  
24 workers’ compensation claimant or work-  
25 ers’ compensation payer who is party to

1 the agreement may elect, but is not re-  
2 quired, to transfer to the Secretary a di-  
3 rect payment of the qualified Medicare set-  
4 aside. With respect to a qualified Medicare  
5 set-aside paid directly to the Secretary, the  
6 parties involved may calculate the Medi-  
7 care set-aside amount of such set-aside  
8 using any of the following methods:

9 “(I) In the case of any Medicare  
10 set-aside of a compromise settlement  
11 agreement under paragraph (2)(C)(ii),  
12 the amount calculated in accordance  
13 with such paragraph.

14 “(II) In the case of any Medicare  
15 set-aside, the amount based upon the  
16 payment amount for items and serv-  
17 ices under the workers’ compensation  
18 fee schedule (effective as of the date  
19 of the agreement) applicable to the  
20 workers’ compensation law or plan in-  
21 volved, in accordance with paragraph  
22 (2)(C)(i)(I).

23 “(III) In the case of any Medi-  
24 care set-aside, the payment amount  
25 applicable to the items and services

1 under this title as in effect on the ef-  
2 fective date of the agreement.

3 Such transfer shall be in accordance with  
4 a procedure established by the Secretary  
5 and shall be made only upon written con-  
6 sent of the other party to the agreement.

7 “(ii) ELECTION SATISFYING LIABIL-  
8 ITY.—An election made under clause (i),  
9 with respect to a qualified Medicare set-  
10 aside shall satisfy any payment, in relation  
11 to the underlying claim of the related  
12 workers’ compensation settlement agree-  
13 ment, required under subsection (b)(2) to  
14 be made by the claimant or payer to the  
15 Secretary. The Secretary shall have no fur-  
16 ther recourse, directly or indirectly, under  
17 this title with respect to such agreement.

18 “(B) REQUIREMENT FOR TIMELY NOTICE  
19 OF MEDICARE REPAYMENTS OWED BY WORK-  
20 ERS’ COMPENSATION CLAIMANT OR PAYER TO  
21 SECRETARY.—

22 “(i) IN GENERAL.—Not later than 90  
23 days after the date on which the Secretary  
24 receives a request from a workers’ com-  
25 pensation claimant or workers’ compensa-



1           tion payer for documentation of any condi-  
2           tional payment made under subsection  
3           (b)(2)(B)(i) on behalf of the claimant, the  
4           Secretary shall provide to the claimant or  
5           payer such documentation. Such docu-  
6           mentation shall be sufficient for the claim-  
7           ant or payer to make a reasonable deter-  
8           mination whether such a payment was for  
9           an item or service furnished in connection  
10          with the claimant's work related injury or  
11          illness involved. The claimant or payer may  
12          rely on the documentation provided under  
13          this clause in making such determination.  
14          Payment of the amount of the conditional  
15          payment, after deducting from such  
16          amount any procurement costs involved  
17          and any costs for unrelated and inappro-  
18          priate items or services, shall discharge  
19          further liability with respect to the condi-  
20          tional payment.

21               “(ii) LIABILITY FOR REIMBURSE-  
22               MENTS RELATED TO REQUESTED INFOR-  
23               MATION.—If the Secretary fails to provide  
24               information in accordance with clause (i),  
25               then neither the claimant nor the payer de-

1           scribed in such clause shall be liable for  
2           any reimbursement under subsection  
3           (b)(2)(B) with respect to the conditional  
4           payment for which information was re-  
5           quested under such clause.

6           “(C) PROTECTION FROM CERTAIN LIABIL-  
7           ITY.—

8                   “(i) LIABILITY FOR MEDICARE SET-  
9           ASIDE PAYMENT GREATER THAN PAYMENT  
10          UNDER WORKERS’ COMPENSATION LAW.—  
11          No workers’ compensation claimant, work-  
12          ers’ compensation payer, employer, admin-  
13          istrator of the Medicare set-aside, legal  
14          representative of the claimant, payer, em-  
15          ployer, or administrator, or any other  
16          party related to the claimant, payer, em-  
17          ployer, or administrator shall be liable for  
18          any payment amount established under a  
19          Medicare set-aside for an item or service  
20          provided to the claimant that is greater  
21          than the payment amount for the item or  
22          service established under the workers’ com-  
23          pensation fee schedule (or in the absence  
24          of such schedule, the medical reimburse-  
25          ment rate) under the compensation law or

1 plan of the jurisdiction where the agree-  
2 ment will be effective.

3 “(ii) LIABILITY FOR PROVIDER  
4 CHARGES GREATER THAN PAYMENT  
5 UNDER WORKERS’ COMPENSATION AGREE-  
6 MENT.—With respect to a workers’ com-  
7 pensation settlement agreement, a provider  
8 may not bill (or collect any amount from)  
9 the workers’ compensation claimant, work-  
10 ers’ compensation payer, employer, admin-  
11 istrator of the Medicare set-aside, legal  
12 representative of the claimant, payer, em-  
13 ployer, or administrator, or any other  
14 party related to the claimant, payer, em-  
15 ployer, or administrator an amount for  
16 items and services provided to the claimant  
17 that is greater than the payment rate for  
18 such items and services established under  
19 the Medicare set-aside of the agreement.  
20 No person is liable for payment of any  
21 amounts billed for an item or service in  
22 violation of the previous sentence. If a pro-  
23 vider willfully bills (or collects an amount)  
24 for such an item or service in violation of  
25 such sentence, the Secretary may apply

1           sanctions against the provider in accord-  
2           ance with section 1842(j)(2) in the same  
3           manner as such section applies with re-  
4           spect to a physician. Paragraph (4) of sec-  
5           tion 1842(j) shall apply under this clause  
6           in the same manner as such paragraph ap-  
7           plies under such section.

8           “(6) TREATMENT OF STATE WORKERS’ COM-  
9           PENSATION LAW.—For purposes of this subsection  
10          and subsection (p), if a workers’ compensation set-  
11          tlement agreement is accepted, reviewed, approved,  
12          or otherwise finalized in accordance with the work-  
13          ers’ compensation law of the jurisdiction in which  
14          such agreement will be effective, such acceptance, re-  
15          view, approval, or other finalization shall be deemed  
16          conclusive as to any and all matters within the juris-  
17          diction of the workers’ compensation law, including  
18          the determination of reasonableness of the settle-  
19          ment value; any allocations of settlement funds; the  
20          projection of future indemnity or medical benefits  
21          that may be payable under the State workers’ com-  
22          pensation law; and, in the case of a compromise  
23          agreement, the total amount that could have been  
24          payable for a claim which is the subject of such  
25          agreement in accordance with paragraph (2)(C)(ii).

1 A determination made by applicable authority for a  
 2 jurisdiction that a workers' compensation settlement  
 3 agreement is in accordance with the workers' com-  
 4 pensation law of the jurisdiction shall not be subject  
 5 to review by the Secretary.”.

6 (c) CONFORMING AMENDMENTS.—Subsection (b) of  
 7 such section is further amended—

8 (1) in paragraph (2)(B)(ii), by striking “A pri-  
 9 mary plan” and inserting “Subject to subsections  
 10 (p) and (q), a primary plan”;

11 (2) in paragraph (2)(B)(iii)—

12 (A) in the first sentence, by striking “In  
 13 order to recover payment” and inserting “Sub-  
 14 ject to subsection (q), in order to recover pay-  
 15 ment”; and

16 (B) in the third sentence, by striking “In  
 17 addition” and inserting “Subject to subsection  
 18 (q), in addition”; and

19 (3) in paragraph (3)(A), by striking “There is  
 20 established a private cause of action” and inserting  
 21 “Subject to subsection (q), there is established a pri-  
 22 vate cause of action”.

23 (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF  
 24 MEDICARE SECONDARY PAYER PROVISIONS.—Subsection  
 25 (b)(2)(A) of such section is amended by striking “work-

1 men’s compensation law or plan” and inserting “workers’  
2 compensation law or plan” each place it appears.

3 **SEC. 3. LIMITATION ON LIABILITY.**

4       The parties to a workers’ compensation settlement  
5 agreement which met the provisions of section 1862(b) of  
6 the Social Security Act (42 U.S.C. 1395y (b)) on the effec-  
7 tive date of settlement shall be accepted as meeting the  
8 requirements of such section notwithstanding changes in  
9 law, regulations, or administrative interpretation of such  
10 provisions after the effective date of such settlement.  
11 Nothing in section 1862(b) of the Social Security Act (42  
12 U.S.C. 1395y (b)) shall authorize the Secretary of Health  
13 and Human Services to impose liability that is additional  
14 to the liability in effect on the date of the enactment of  
15 this Act with respect to a workers’ compensation settle-  
16 ment agreement the effective date of which is before such  
17 date of enactment, except in the case of fraud.

18 **SEC. 4. EFFECTIVE DATE.**

19       The amendments made by this Act shall apply to a  
20 workers’ compensation settlement agreement with an ef-  
21 fective date on or after the date of the enactment of this  
22 Act.

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