

COMMITTEE PRINT

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112TH CONGRESS
1ST SESSION

H. R. 1063

To amend title XVIII of the Social Security Act with respect to the
application of Medicare secondary payer rules for certain claims.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2011

Mr. MURPHY of Pennsylvania (for himself and Mr. KIND) 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

A BILL

To amend title XVIII of the Social Security Act with respect
to the application of Medicare secondary payer rules
for certain claims.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Strengthening Medicare And Repaying Taxpayers Act of
4 2012”.

5 (b) **TABLE OF CONTENTS.**—The table of contents of
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Determination of reimbursement amount through CMS website to improve program efficiency.
- Sec. 3. Fiscal efficiency and revenue neutrality.
- Sec. 4. Reporting requirement.
- Sec. 5. Use of social security numbers and other identifying information in reporting.
- Sec. 6. Statute of limitations.

7 **SEC. 2. DETERMINATION OF REIMBURSEMENT AMOUNT**
8 **THROUGH CMS WEBSITE TO IMPROVE PRO-**
9 **GRAM EFFICIENCY.**

10 Section 1862(b)(2)(B) of the Social Security Act (42
11 U.S.C. 1395y(b)(2)(B)) is amended by adding at the end
12 the following new clause:

13 “(vii) **USE OF WEBSITE TO DETER-**
14 **MINE FINAL CONDITIONAL REIMBURSE-**
15 **MENT AMOUNT.**—

16 “(I) **NOTICE TO SECRETARY OF**
17 **EXPECTED DATE OF A SETTLEMENT,**
18 **JUDGMENT, ETC.**—In the case of a
19 payment made by the Secretary pur-
20 suant to clause (i) for items and serv-
21 ices provided to the claimant, the
22 claimant or applicable plan (as de-

1 fined in paragraph (8)(F)) may at
2 any time beginning 120 days before
3 the reasonably expected date of a set-
4 tlement, judgment, award, or other
5 payment, notify the Secretary that a
6 payment is reasonably expected and
7 the expected date of such payment.

8 “(II) SECRETARIAL PROVIDING
9 ACCESS TO CLAIMS INFORMATION
10 THROUGH A WEBSITE.—The Sec-
11 retary shall maintain and make avail-
12 able to individuals to whom items and
13 services are furnished under this title
14 (and to authorized family or other
15 representatives recognized under regu-
16 lations and to an applicable plan
17 which has obtained the consent of the
18 individual) access to information on
19 the claims for such items and services
20 (including payment amounts for such
21 claims), including those claims that
22 are attributable to a specific injury or
23 incident that forms the basis for a
24 settlement, judgment, award or other
25 payment relating to an injury or inci-

1 dent to which this subsection applies.
2 Such access shall be provided to an
3 individual, representative, or plan
4 through a website that requires a
5 password to gain access to the infor-
6 mation. The Secretary shall update
7 the information on claims on such
8 website in as timely a manner as pos-
9 sible but not later than 15 days after
10 the date of receipt of such claims.
11 Such information shall be maintained
12 and made available consistent with
13 the following:

14 “(aa) The information shall
15 be as complete as possible.

16 “(bb) The information accu-
17 rately identifies those claims and
18 payments that are related to an
19 injury or incident to which the
20 provisions of this subsection
21 apply.

22 “(cc) The website provides a
23 method for the receipt of secure
24 electronic communications with

1 the individual, representative, or
2 plan involved.

3 “(dd) The website provides
4 that information is transmitted
5 from the website in a form that
6 includes an official time and date
7 that the information is trans-
8 mitted.

9 “(ee) The website shall per-
10 mit the individual, representative,
11 or plan to download a statement
12 of reimbursement amounts (in
13 this clause referred to as a ‘state-
14 ment of reimbursement amount’)
15 on claims and payments under
16 this title relating to a specific in-
17 jury or incident of the individual.

18 “(III) USE OF WEB DOWNLOAD
19 AS BASIS FOR FINAL CONDITIONAL
20 AMOUNT.—If an individual (or other
21 claimant or applicable plan with the
22 consent of the individual) obtains a
23 statement of reimbursement amount
24 from the website during the protected
25 period described in subclause (IV) and

1 the related settlement, judgment,
2 award or other payment is made dur-
3 ing such period, then the last state-
4 ment of reimbursement amount
5 downloaded during such period shall
6 constitute the final conditional
7 amount subject to recovery under
8 clause (ii) related to such settlement,
9 judgment, award, or other payment..

10 “(IV) RESOLUTION OF DISCREP-
11 ANCIES.—If the individual, represent-
12 ative, or plan involved believes there is
13 a discrepancy with the statement of
14 reimbursement amount, the Secretary
15 shall provide a timely process con-
16 sistent with the expected date of set-
17 tlement, judgment, award, or other
18 payment to resolve the discrepancy.

19 “(V) PROTECTED PERIOD.—In
20 subclause (III), the term ‘protected
21 period’ means, with respect to a set-
22 tlement, judgment, award or other
23 payment relating to an injury or inci-
24 dent, the portion (if any) of the 120-
25 day period beginning on the date of

1 notice under subclause (I) with re-
2 spect to such settlement, judgment,
3 award, or other payment that is after
4 the end of the 65-day period begin-
5 ning on the date of such notice to the
6 Secretary.

7 “(VI) EFFECTIVE DATE.—The
8 Secretary shall promulgate final regu-
9 lations to carry out this clause not
10 later than 9 months after the date of
11 the enactment of this clause.

12 “(VII) WEBSITE INCLUDING SUC-
13 CESSOR TECHNOLOGY.—In this
14 clause, the term ‘website’ includes any
15 successor technology.

16 “(viii) RIGHT OF APPEAL.—The Sec-
17 retary shall promulgate regulations estab-
18 lishing a right of appeal and appeals proc-
19 ess, with respect to any determination
20 under this subsection for a payment made
21 under this title for an item or service
22 under an applicable plan for which the
23 Secretary is seeking to recover funds from
24 such plan, under which the applicable plan
25 involved, or an attorney, agent, or third

1 party administrator on behalf of such ap-
2 plicable plan, may appeal such determina-
3 tion. The individual furnished such an item
4 or service shall be notified of the plan's in-
5 tent to appeal such determination. Such
6 right of appeal shall be consistent with the
7 rights of appeal of group health plans.”.

8 **SEC. 3. FISCAL EFFICIENCY AND REVENUE NEUTRALITY.**

9 (a) IN GENERAL.—Section 1862(b) of the Social Se-
10 curity Act (42 U.S.C. 1395y(b)) is amended—

11 (1) in paragraph (2)(B)(ii), by striking “A pri-
12 mary plan” and inserting “Subject to paragraph (9),
13 a primary plan”; and

14 (2) by adding at the end the following new
15 paragraph:

16 “(9) EXCEPTION.—

17 “(A) IN GENERAL.—Clause (ii) of para-
18 graph (2)(B) and any reporting required by
19 paragraph (8) shall not apply with respect to
20 any settlement, judgment, award, or other pay-
21 ment by an applicable plan constituting a total
22 payment obligation to a claimant of not more
23 than the single threshold amount calculated by
24 the Secretary under subparagraph (B) for the
25 year involved.

1 “(B) ANNUAL COMPUTATION OF THRESH-
2 OLDS.—Not later than November 15 before
3 each year, the Secretary shall calculate and
4 publish a single threshold amount for settle-
5 ments, judgments, awards, or other payments
6 for conditional payment obligations arising from
7 liability insurance (including self-insurance) and
8 for alleged physical trauma-based incidents (ex-
9 cluding alleged ingestion, implantation, or expo-
10 sure cases) subject to this section for that year.
11 Each such annual single threshold amount for
12 a year shall be set such that the expected aver-
13 age amount to be credited to the Medicare trust
14 funds of collections of conditional payments
15 from such settlements, judgments, awards, or
16 other payments for each of liability insurance
17 (including self-insurance), workers’ compensa-
18 tion laws or plans, and no fault insurance sub-
19 ject to this section shall equal the expected cost
20 of collection incurred by the United States (in-
21 cluding payments made to contractors) for a
22 conditional payment from each of liability insur-
23 ance (including self-insurance) and alleged
24 physical trauma- based incidents (excluding al-
25 leged ingestion, implantation or exposure cases)

1 subject to this section for the year. At the time
2 of calculating, but before publishing, the single
3 threshold amount for a year, the Secretary shall
4 inform, and seek review of, the Comptroller
5 General of the United States with regard to
6 such amount. The Secretary shall include, as
7 part of such publication for a year—

8 “(i) the expected cost of collection in-
9 curred by the United States (including
10 payments made to contractors) for a condi-
11 tional payment arising from liability insur-
12 ance (including self-insurance) and from
13 alleged physical trauma-based incidents
14 (excluding alleged ingestion, implantation
15 or exposure cases; and

16 “(ii) a summary of the methodology
17 and data used by the Secretary in com-
18 puting each such threshold amount and
19 such cost of collection.

20 “(C) TREATMENT OF ONGOING EX-
21 PENSES.—For purposes of this paragraph and
22 with respect to a settlement, judgment, award,
23 or other payment not otherwise addressed in
24 clause (ii) of paragraph (2)(B) involving the on-
25 going responsibility for medical payments, such

1 payment shall include only the cumulative value
2 of the medical payments made.

3 “(D) REPORT TO CONGRESS.—Not later
4 than November 15 before each year, the Sec-
5 retary shall submit to the Congress a report on
6 a single threshold amount for settlements, judg-
7 ments, awards, or other payments for condi-
8 tional payment obligations arising from each of
9 liability insurance (including self-insurance)
10 claims for ingestion, implantation and exposure
11 cases, workers compensation cases, and no fault
12 insurance cases subject to this section for that
13 year. For each such report, the Secretary
14 shall—

15 “(i) calculate each such threshold
16 amount by using the methodology de-
17 scribed in subparagraph (B); and

18 “(ii) include a summary of the meth-
19 odology and data used in calculating each
20 such threshold amount and the amount of
21 expected savings under this title achieved
22 by the Secretary implementing such
23 thresholds.”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 subsection (a) shall apply to years beginning more than
3 4½ months after the date of the enactment of this Act.

4 **SEC. 4. REPORTING REQUIREMENT.**

5 Section 1862(b)(8) of the Social Security Act (42
6 U.S.C. 1395y(b)(8)) is amended—

7 (1) in the first sentence of subparagraph (E)(i),
8 by striking “shall be subject” and all that follows
9 through the end of the sentence and inserting the
10 following: “may be subject to a civil money penalty
11 of up to \$1,000 for each day of noncompliance with
12 respect to each claimant.”; and

13 (2) by adding at the end the following new sub-
14 paragraph:

15 “(I) **REGULATIONS.**—Not later than 60
16 days after the date of the enactment of this
17 subparagraph, the Secretary shall publish a no-
18 tice in the Federal Register soliciting proposals,
19 which will be accepted during a 60-day period,
20 for the specification of practices for which sanc-
21 tions will and will not be imposed under sub-
22 paragraph (E), including not imposing sanc-
23 tions for good faith efforts to identify a bene-
24 ficiary pursuant to this paragraph under an ap-
25 plicable entity responsible for reporting infor-

1 mation. After considering the proposals so sub-
2 mitted, the Secretary, in consultation with the
3 Attorney General, shall publish in the Federal
4 Register, including a 60-day period for com-
5 ment, proposed specified practices for which
6 such sanctions will and will not be imposed.
7 After considering any public comments received
8 during such period, the Secretary shall issue
9 final rules specifying such practices.”.

10 **SEC. 5. USE OF SOCIAL SECURITY NUMBERS AND OTHER**
11 **IDENTIFYING INFORMATION IN REPORTING.**

12 Section 1862(b)(8)(B) of the Social Security Act (42
13 U.S.C. 1395y(b)(8)(B)) is amended by adding at the end
14 (after and below clause (ii)) the following:

15 “Not later than 18 months after the date of en-
16 actment of this sentence, the Secretary shall
17 modify the reporting requirements under this
18 paragraph so that an applicable plan in com-
19 plying with such requirements is permitted but
20 not required to access or report to the Sec-
21 retary beneficiary social security account num-
22 bers or health identification claim numbers, ex-
23 cept that the deadline for such modification
24 shall be extended by a period (specified by the
25 Secretary) of up to 12 months if the Secretary

1 notifies the Committees of jurisdiction of the
2 House of Representatives and of the Senate
3 that prior deadline for such modification threat-
4 ens patient privacy or the integrity of the sec-
5 ondary payer program under this subsection.”.

6 **SEC. 6. STATUTE OF LIMITATIONS.**

7 (a) IN GENERAL.—Section 1862(b)(2)(B)(iii) of the
8 Social Security Act (42 U.S.C. 1395y(b)(2)(B)(iii)) is
9 amended by adding at the end the following new sentence:
10 “An action may not be brought by the United States
11 under this clause with respect to payment owed unless the
12 complaint is filed not later than 3 years after the date
13 of the receipt of notice of a settlement, judgment, award,
14 or other payment made pursuant to paragraph (8) relating
15 to such payment owed.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply with respect to actions brought
18 and penalties sought on or after 6 months after the date
19 of the enactment of this Act.