

111TH CONGRESS  
1ST SESSION

# H. R. 2641

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

MAY 21, 2009

Mr. TANNER (for himself, Mr. CHILDERS, Mr. BRADY of Pennsylvania, and Mr. MATHESON) 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 2009".

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) EXCEPTION FROM 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 (n),” after “(ii)”; and

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

14 “(n) EXCEPTION FROM 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, for purposes of sub-  
19 section (b), as a primary plan with respect to an ex-  
20 empt workers' compensation settlement agreement.

21 “(2) EXEMPT WORKERS' COMPENSATION SET-  
22 TLEMENT AGREEMENT DEFINED.—For purposes of  
23 this subsection, an ‘exempt workers' compensation  
24 settlement agreement’ means a workers' compensa-  
25 tion agreement that is described in any of the fol-  
26 lowing subparagraphs:

1           “(A) PRESENT VALUE OF \$25,000 OR  
2 LESS.—A workers’ compensation settlement  
3 agreement that has a present value, as deter-  
4 mined under paragraph (3), that is, subject to  
5 the last sentence of this paragraph, \$25,000 or  
6 less.

7           “(B) LIKELY INELIGIBILITY OF WORKERS’  
8 COMPENSATION CLAIMANT FOR MEDICARE BEN-  
9 EFITS.—A workers’ compensation settlement  
10 agreement the claimant of which is not eligible  
11 for benefits under this title as of the effective  
12 date of the agreement and, under paragraph  
13 (4), is unlikely to become so eligible within 30  
14 months after such effective date.

15           “(C) NO FUTURE MEDICAL EXPENSES.—A  
16 workers’ compensation settlement agreement  
17 the claimant of which is not eligible for pay-  
18 ment of medical expenses incurred after the ef-  
19 fective date of such agreement that are avail-  
20 able under the workers’ compensation law or  
21 plan of the jurisdiction in which such agree-  
22 ment will be effective.

23           “(D) NO LIMITATION ON FUTURE MEDICAL  
24 EXPENSES.—A workers’ compensation settle-  
25 ment agreement that does not limit or extin-

1           guish the right of the claimant involved to pay-  
2           ment of medical expenses incurred after the ef-  
3           fective date of such agreement that are avail-  
4           able under the workers' compensation law or  
5           plan of the jurisdiction in which such agree-  
6           ment will be effective.

7           The Secretary may adopt rules for an increase in the  
8           dollar amount specified under subparagraph (A).

9           “(3) DETERMINATION OF PRESENT VALUE OF  
10          WORKERS’ COMPENSATION SETTLEMENT AGREE-  
11          MENT.—

12                 “(A) IN GENERAL.—Subject to subpara-  
13                 graph (B), for purposes of paragraph (2)(A)  
14                 and subsection (o) and with respect to a work-  
15                 related injury or illness that is the subject of a  
16                 workers’ compensation settlement agreement,  
17                 the present value of the agreement is the sum  
18                 of any of the following amounts that are used  
19                 to fund the agreement:

20                         “(i) The amount of any cash payment.

21                         “(ii) The amount of the purchase cost  
22                         of an annuity (and not the payout or the  
23                         projected payout paid during the term of  
24                         such annuity).

1           “(iii) The amount of the sum of any  
2           funds under clause (i) or (ii), previously  
3           paid pursuant to a workers’ compensation  
4           settlement agreement for the same work-  
5           ers’ compensation claim.

6           “(B) COSTS EXCLUDED FROM PRESENT  
7           VALUE.—The present value of a workers’ com-  
8           pensation settlement agreement does not in-  
9           clude the following payments made because of  
10          the workers’ compensation claim involved:

11           “(i) Payments to satisfy previous un-  
12          paid medical expenses.

13           “(ii) Payments to satisfy third party  
14          claims or liens for amounts previously  
15          paid, such as payments under this title,  
16          payments under the Medicaid program  
17          under title XIX, payments under a pro-  
18          gram of the Department of Veterans Af-  
19          fairs under title 38, United States Code,  
20          payments under an employee welfare ben-  
21          efit plan (as defined in section 3(1) of the  
22          Employee Retirement and Income Security  
23          Act of 1974), and other similar third party  
24          payments.

1                   “(iii) The attorney fees for the claim-  
2                   ant involved.

3                   “(iv) Any other procurement costs in-  
4                   curred by a party to the agreement to se-  
5                   cure the agreement.

6                   “(4) DETERMINATION OF LIKELY INELIGI-  
7                   BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—  
8                   For purposes of paragraph (2)(B), a workers’ com-  
9                   pensation claimant shall be deemed unlikely to be-  
10                  come eligible for benefits under this title within 30  
11                  months after the effective date of othe agreement  
12                  unless, as of the effective date of the agreement,  
13                  such claimant is insured for disability insurance ben-  
14                  efits as determined under subsection (c)(1) of sec-  
15                  tion 223 and meets any of the following require-  
16                  ments:

17                  “(A) AWARDED DISABILITY BENEFITS.—  
18                  The claimant has been awarded disability insur-  
19                  ance benefits.

20                  “(B) APPLIED FOR DISABILITY.—The  
21                  claimant has applied for disability insurance  
22                  benefits and the claimant’s application has been  
23                  pending without decision for 90 days or less  
24                  after the date of filing the application.

1           “(C) APPEALING DENIAL OF DISABILITY  
2 BENEFITS.—The claimant has been denied dis-  
3 ability insurance benefits and is appealing (or  
4 intending to appeal) a denial of such benefits  
5 under subsection (a) of such section.

6           “(D) MINIMUM AGE.—The claimant is at  
7 least 62 years and 6 months of age.

8           “(E) END STAGE RENAL DISEASE.—The  
9 claimant is medically determined to have end  
10 stage renal disease, but does not as of such  
11 date qualify for benefits under this title by rea-  
12 son of such disease.

13           “(5) DEFINITIONS.—For purposes of this sub-  
14 section and subsection (o):

15           “(A) WORKERS’ COMPENSATION SETTLE-  
16 MENT AGREEMENT.—The term ‘workers’ com-  
17 pensation settlement agreement’ means an  
18 agreement, including a commutation agreement  
19 or compromise agreement, or any combination  
20 of both, between a workers’ compensation  
21 claimant and one or more workers’ compensa-  
22 tion payers which is intended—

23           “(i) to foreclose the possibility of fu-  
24 ture payment of some or all workers’ com-  
25 pensation benefits involved; and

1           “(ii)(I) to compensate the claimant  
2           for a work-related injury or illness as pro-  
3           vided for by a workers’ compensation law  
4           or plan; or

5           “(II) to eliminate cause for litigation  
6           involving issues in dispute between the  
7           claimant and payer.

8           “(B) WORKERS’ COMPENSATION PAYER.—

9           The term ‘workers’ compensation payer’ means,  
10          with respect to a workers’ compensation law or  
11          plan, a workers’ compensation insurer, self-in-  
12          surer, employer, individual, or any other entity  
13          that is or may be liable for the payment of ben-  
14          efits to a workers’ compensation claimant pur-  
15          suant to the workers’ compensation law or plan.

16          “(C) WORKERS’ COMPENSATION CLAIM-  
17          ANT.—The term ‘workers’ compensation claim-  
18          ant’ means a worker who—

19               “(i) is or may be covered under a  
20               workers’ compensation law or plan (or  
21               similar compensation plan); and

22               “(ii) submits a claim or accepts bene-  
23               fits under such law or plan (or similar  
24               compensation plan) for a work-related in-  
25               jury or illness.

1                   “(D) WORKERS’ COMPENSATION LAW OR  
2                   PLAN.—

3                   “(i) IN GENERAL.—The term ‘work-  
4                   ers’ compensation law or plan’ means a  
5                   law or program administered by a State or  
6                   the United States to provide compensation  
7                   to workers for a work-related injury or ill-  
8                   ness (or for disability or death caused by  
9                   such an injury or illness), including the  
10                  Longshore and Harbor Workers’ Com-  
11                  pensation Act (33 U.S.C. 901–944, 948–  
12                  950), chapter 81 of title 5, United States  
13                  Code (known as the Federal Employees  
14                  Compensation Act), the Black Lung Bene-  
15                  fits Act (30 U.S.C. 931 et seq.), and part  
16                  C of title 4 of the Federal Coal Mine and  
17                  Safety Act (30 U.S.C. 901 et seq.), but not  
18                  including the Act of April 22, 1908 (45  
19                  U.S.C. 51 et seq.) (popularly referred to as  
20                  the Federal Employer’s Liability Act).

21                  “(ii) INCLUSION OF SIMILAR COM-  
22                  PENSATION PLAN.—Such term includes a  
23                  similar compensation plan established by  
24                  an employer that is funded by such em-  
25                  ployer or the insurance carrier of such em-

1           ployer to provide compensation to a worker  
2           of such employer for a work-related injury  
3           or illness.

4           “(E) COMPROMISE AGREEMENT.—The  
5           term ‘compromise agreement’ means a workers’  
6           compensation settlement agreement that—

7                   “(i) applies to a workers’ compensa-  
8                   tion claim that is denied or contested, in  
9                   whole or in part, by a workers’ compensa-  
10                  tion payer involved under the workers’  
11                  compensation law or plan (or similar com-  
12                  pensation plan) applicable to the jurisdic-  
13                  tion in which the agreement has been set-  
14                  tled; and

15                   “(ii) does not provide for a payment  
16                  of the full amount of benefits sought or  
17                  payable under the workers’ compensation  
18                  claim.

19           “(F) COMMUTATION AGREEMENT.—The  
20           term ‘commutation agreement’ means a work-  
21           ers’ compensation settlement agreement to set-  
22           tle all or a portion of a workers’ compensation  
23           claim, in which—

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

1           “(ii) the parties to the agreement  
2           agree to include payment for future work-  
3           ers’ compensation benefits payable after  
4           the date on which the agreement becomes  
5           effective.”.

6           (b) SATISFACTION OF SECONDARY PAYER REQUIRE-  
7           MENTS THROUGH USE OF QUALIFIED MEDICARE SET-  
8           ASIDES UNDER WORKERS’ COMPENSATION SETTLEMENT  
9           AGREEMENTS.—Section 1862 of the Social Security Act  
10          (42 U.S.C. 1395y), as amended by subsection (a), is fur-  
11          ther amended by adding at the end the following new sub-  
12          section:

13          “(o) TREATMENT OF QUALIFIED MEDICARE SET-  
14          ASIDES UNDER WORKERS’ COMPENSATION SETTLEMENT  
15          AGREEMENTS.—

16                 “(1) SATISFACTION OF SECONDARY PAYER RE-  
17                 QUIREMENTS THROUGH USE OF QUALIFIED MEDI-  
18                 CARE SET-ASIDES.—

19                         “(A) FULL SATISFACTION OF CLAIM OBLI-  
20                         GATIONS.—

21                                 “(i) IN GENERAL.—If a workers’ com-  
22                                 pensation settlement agreement, related to  
23                                 a claim of a workers’ compensation claim-  
24                                 ant, includes a qualified Medicare set-  
25                                 aside, such set-aside shall satisfy any obli-

1           gation with respect to the present or future  
2           payment reimbursement under subsection  
3           (b)(2), with respect to such claim. The  
4           Secretary shall have no further recourse,  
5           directly or indirectly, under this title.

6           “(ii) RULE OF CONSTRUCTION.—  
7           Nothing in this section shall be construed  
8           as requiring the submission of a Medicare  
9           set-aside to the Secretary.

10          “(B) MEDICARE SET-ASIDE AND MEDI-  
11          CARE SET-ASIDE AMOUNT DEFINED.—For pur-  
12          poses of this subsection:

13               “(i) MEDICARE SET-ASIDE.—The  
14               term ‘Medicare set-aside’ means, with re-  
15               spect to a workers’ compensation settle-  
16               ment agreement, a provision in the agree-  
17               ment that provides for a payment of a  
18               lump sum, annuity, a combination of a  
19               lump sum and an annuity, or other  
20               amount that is in full satisfaction of the  
21               obligation described in subparagraph (A)  
22               for items and services that the workers’  
23               compensation claimant under the agree-  
24               ment received or is likely to receive under  
25               the applicable workers’ compensation law

1 and for which payment would be made  
2 under this title, but for subsection  
3 (b)(2)(A).

4 “(ii) MEDICARE SET-ASIDE  
5 AMOUNT.—The term ‘Medicare set-aside  
6 amount’ means, with respect to a Medicare  
7 set-aside, the amount described in clause  
8 (i).

9 “(2) QUALIFIED MEDICARE SET-ASIDE.—

10 “(A) REQUIREMENTS OF QUALIFIED MEDI-  
11 CARE SET-ASIDE.—For purposes of this sub-  
12 section, the term ‘qualified Medicare set-aside’  
13 is a Medicare set-aside in which the Medicare  
14 set-aside amount reasonably takes into account  
15 the full payment obligation described in para-  
16 graph (1)(A), consistent with subparagraphs  
17 (B) and (C) and giving due consideration to the  
18 following:

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

21 “(ii) The age and life expectancy of  
22 the claimant involved.

23 “(iii) The reasonableness of and ne-  
24 cessity for future medical expenses for  
25 treatment of the illness or injury involved.

1           “(iv) The duration of and limitation  
2           on benefits payable under the workers’  
3           compensation law or plan involved.

4           “(B) ITEMS AND SERVICES INCLUDED.—  
5           The Medicare set-aside—

6           “(i) shall include payment for items  
7           and services that are authorized for pay-  
8           ment under this title as of the effective  
9           date of the workers’ compensation settle-  
10          ment agreement involved and that are cov-  
11          ered by the workers’ compensation law or  
12          plan involved; and

13          “(ii) is not required to provide for  
14          payment for items and services that are  
15          not described in clause (i).

16          “(C) PAYMENT REQUIREMENTS.—

17          “(i) REQUIRED USE OF WORKERS’  
18          COMPENSATION FEE SCHEDULE.—

19                 “(I) IN GENERAL.—Except in the  
20                 cases of a Medicare set-aside deemed  
21                 a qualified Medicare set-aside under  
22                 paragraph (4)(A) or an optional direct  
23                 payment of a Medicare set-aside made  
24                 under paragraph (6)(A), the set-aside  
25                 amount shall be based upon the pay-

1           ment amount for items and services  
2           under the workers' compensation fee  
3           schedule (effective as of the date of  
4           the agreement) applicable to the work-  
5           ers' compensation law or plan in-  
6           volved.

7                   “(II) WORKERS’ COMPENSATION  
8           FEE SCHEDULE DEFINED.—For pur-  
9           poses of this subsection, the term  
10          ‘workers’ compensation fee schedule’  
11          means, with respect to a workers’  
12          compensation law or plan of a State  
13          or a similar plan applicable in a State,  
14          the schedule of payment amounts the  
15          State has established to pay providers  
16          for items and services furnished to  
17          workers who incur a work-related in-  
18          jury or illness as defined under such  
19          law or plan (or in the absence of such  
20          a schedule, the applicable medical re-  
21          imbursement rate under such law or  
22          plan).

23                   “(ii) REQUIRED PAYMENT ADJUST-  
24          MENT FOR CERTAIN FEES.—The Medicare

1 set-aside amount otherwise computed shall  
2 be reduced by—

3 “(I) the amount of the direct  
4 costs and expenses incurred in estab-  
5 lishing, administering, or securing ap-  
6 proval for the Medicare set-aside; and

7 “(II) the proportional share of  
8 other costs and expenses (including  
9 fees for attorneys, third-party ven-  
10 dors, and administrators) incurred by  
11 the claimant or payer in entering into  
12 the workers’ compensation settlement  
13 agreement involved.

14 “(iii) OPTIONAL PROPORTIONAL AD-  
15 JUSTMENT FOR COMPROMISE SETTLEMENT  
16 AGREEMENTS.—

17 “(I) IN GENERAL.—In the case  
18 of a compromise settlement agree-  
19 ment, a workers’ compensation claim-  
20 ant or workers’ compensation payer  
21 who is party to the agreement may  
22 elect (but is not required) to calculate  
23 the Medicare set-aside amount of the  
24 agreement by applying a percentage  
25 reduction to the Medicare set-aside

1 amount for the total settlement  
2 amount that could have been payable  
3 under the applicable workers' com-  
4 pensation law or similar plan involved  
5 had the denied or contested portion of  
6 the claim not been subject to a com-  
7 promise agreement. The percentage  
8 reduction shall be equal to the denied  
9 or contested percentage of such total  
10 settlement. Such election may be  
11 made by a party to the agreement  
12 only with the written consent of the  
13 other party to the agreement.

14 “(II) APPLICATION.—If the  
15 workers' compensation claimant or  
16 workers' compensation payer elects to  
17 calculate the Medicare set-aside  
18 amount under this clause, the Medi-  
19 care set-aside shall be deemed a quali-  
20 fied Medicare set-aside.

21 “(3) PROCESS FOR APPROVAL OF QUALIFIED  
22 MEDICARE SET-ASIDES.—

23 “(A) OPTIONAL PRIOR APPROVAL BY SEC-  
24 RETARY.—A party to a workers' compensation  
25 settlement agreement that includes a Medicare

1 set-aside may submit to the Secretary the set-  
2 aside, including appropriate supporting docu-  
3 mentation specified by the Secretary, for ap-  
4 proval of the set-aside as a qualified Medicare  
5 set-aside. The set-aside shall be submitted in  
6 accordance with a procedure specified by the  
7 Secretary.

8 “(B) AUTOMATIC APPROVAL UNLESS DIS-  
9 APPROVED.—A Medicare set-aside submitted  
10 under subparagraph (A) shall be deemed a  
11 qualified Medicare set-aside unless the Sec-  
12 retary determines and provides notice under  
13 subparagraph (C) that the Medicare set-aside  
14 does not satisfy the requirements of paragraph  
15 (2)(A) because the amount of the proposed  
16 Medicare set-aside is based on a substantial  
17 material error and is not supported by the doc-  
18 umentation submitted under subparagraph (A).

19 “(C) NOTICE OF DETERMINATION OF DIS-  
20 APPROVAL.—Not later than 60 days after the  
21 date on which the Secretary receives a submis-  
22 sion under subparagraph (A), the Secretary  
23 shall notify in writing the parties to the work-  
24 ers’ compensation settlement agreement of the  
25 determination under subparagraph (B). If the

1 determination disapproves such submission the  
2 Secretary shall include with such notification  
3 the specific reasons for the disapproval. A de-  
4 termination that disapproves a submission is  
5 not valid if the determination does not include  
6 a specific explanation of each deficiency of the  
7 submission.

8 “(4) SAFE HARBOR FOR CERTAIN MEDICARE  
9 SET-ASIDES.—

10 “(A) IN GENERAL.—A Medicare set-aside  
11 of a workers’ compensation settlement agree-  
12 ment shall be deemed a qualified Medicare set-  
13 aside if the Medicare set-aside amount is the  
14 safe harbor amount for the agreement and if  
15 the present value of the workers’ compensation  
16 settlement agreement (as determined under  
17 subsection (n)(3)) does not exceed, subject to  
18 subparagraph (D), \$250,000.

19 “(B) SAFE HARBOR AMOUNT DEFINED.—  
20 For purposes of this paragraph, the term ‘safe  
21 harbor amount’ means, for a workers’ com-  
22 pensation settlement agreement, 10 percent of  
23 the present value of the agreement (as deter-  
24 mined under subsection (n)(3)).

1           “(C) RULE OF CONSTRUCTION.—In the  
2 case of a workers’ compensation settlement  
3 agreement with a Medicare set-aside that is  
4 deemed a qualified Medicare set-aside under  
5 subparagraph (A), the fact that the workers’  
6 compensation claimant or workers’ compensa-  
7 tion payer involved may elect direct payment  
8 under paragraph (6)(A) or an adjustment  
9 under paragraph (2)(C)(iii) shall not be con-  
10 strued as prohibiting such claimant or payer  
11 from basing the set-aside amount on the safe  
12 harbor amount for such agreement.

13           “(D) RULES.—The Secretary may adopt  
14 rules for an increase in the dollar amount speci-  
15 fied under subparagraph (A). Such rules may  
16 provide that the increase in such dollar amount  
17 be the same percentage increase as the percent-  
18 age increase in the dollar amount effected  
19 under the last sentence of subsection (n)(2).

20           “(5) APPEALS.—

21           “(A) IN GENERAL.—A party to a workers’  
22 compensation settlement agreement that is dis-  
23 satisfied with a determination under paragraph  
24 (3)(B), upon filing a request for reconsideration  
25 with the Secretary not later than 60 days after

1 the date of notice of such determination, shall  
2 be entitled to—

3 “(i) reconsideration of the determina-  
4 tion by the Secretary (with respect to such  
5 determination);

6 “(ii) a hearing before an administra-  
7 tive judge thereon; and

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

10 “(B) DEADLINES FOR DECISIONS.—

11 “(i) RECONSIDERATIONS.—

12 “(I) IN GENERAL.—The Sec-  
13 retary shall conduct and conclude a  
14 reconsideration of a determination  
15 under paragraph (3)(B) and mail the  
16 notice of the decision of such recon-  
17 sideration by not later than the last  
18 day of the 30-day period beginning on  
19 the date that a request for such re-  
20 consideration has been timely filed.

21 “(II) APPEALS OF RECONSIDER-  
22 ATIONS.—If a party to the workers’  
23 compensation settlement involved is  
24 dissatisfied with the Secretary’s deci-  
25 sion under subclause (I), that party

1 may file an appeal within the 30-day  
2 period after the date of receipt of the  
3 notice of the decision under such sub-  
4 clause and request a hearing before  
5 an administrative law judge.

6 “(III) FAILURE BY SECRETARY  
7 TO PROVIDE NOTICE.—In the case of  
8 a failure by the Secretary to mail the  
9 notice of the decision under subclause  
10 (I) by the last day of the period de-  
11 scribed in such subclause, the party  
12 requesting the reconsideration may re-  
13 quest a hearing before an administra-  
14 tive law judge, notwithstanding any  
15 requirements for a reconsideration of  
16 a determination for purposes of the  
17 party’s right to such hearing.

18 “(ii) HEARINGS.—

19 “(I) IN GENERAL.—An adminis-  
20 trative law judge shall conduct and  
21 conclude a hearing on a decision of  
22 the Secretary under clause (i) and  
23 render a decision on such hearing by  
24 not later than the last day of the 90-  
25 day period beginning on the date that

1 a request for such hearing has been  
2 timely filed.

3 “(II) JUDICIAL REVIEW.—A deci-  
4 sion under subclause (I) by an admin-  
5 istrative law judge constitutes a final  
6 agency action and is subject to judi-  
7 cial review.

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

20 “(6) ADMINISTRATION OF MEDICARE SET-ASIDE  
21 PROVISIONS; PROTECTION FROM CERTAIN LIABIL-  
22 ITY.—

23 “(A) OPTIONAL DIRECT PAYMENT OF  
24 MEDICARE SET-ASIDE AMOUNT.—

1           “(i) ELECTION FOR DIRECT PAYMENT  
2           OF MEDICARE SET-ASIDE.—With respect to  
3           a claim for which a workers’ compensation  
4           settlement agreement is established, a  
5           workers’ compensation claimant or work-  
6           ers’ compensation payer who is party to  
7           the agreement may elect, but is not re-  
8           quired, to transfer to the Secretary a di-  
9           rect payment of the qualified Medicare set-  
10          aside or an annuity purchased to directly  
11          fund the set-aside amount. With respect to  
12          a qualified Medicare set-aside paid directly  
13          to the Secretary, the parties involved may  
14          calculate the Medicare set-aside amount of  
15          such set-aside using any of the following  
16          methods:

17                   “(I) In the case of any Medicare  
18                   set-aside deemed a qualified Medicare  
19                   set-aside under paragraph (4)(A), the  
20                   amount calculated in accordance with  
21                   such paragraph.

22                   “(II) In the case of any Medicare  
23                   set-aside of a compromise settlement  
24                   agreement           under           paragraph

1 (2)(C)(iii), the amount calculated in  
2 accordance with such paragraph.

3 “(III) In the case of any Medi-  
4 care set-aside, the amount based upon  
5 the payment amount for items and  
6 services under the workers’ compensa-  
7 tion fee schedule (effective as of the  
8 date of the agreement) applicable to  
9 the workers’ compensation law or plan  
10 involved, in accordance with para-  
11 graph (2)(C)(i)(I).

12 “(IV) In the case of any Medi-  
13 care set-aside, the payment amount  
14 applicable to the items and services  
15 under this title as in effect on the ef-  
16 fective date of the agreement.

17 Such transfer shall be in accordance with  
18 a procedure established by the Secretary  
19 and shall be made only upon written con-  
20 sent of the other party to the agreement.

21 “(ii) ELECTION SATISFYING LIABIL-  
22 ITY.—An election made under clause (i),  
23 with respect to a qualified Medicare set-  
24 aside shall satisfy any payment, in relation  
25 to the underlying claim of the related

1 workers' compensation settlement agree-  
2 ment, required under subsection (b)(2) to  
3 be made by the claimant or payer to the  
4 Secretary. The Secretary shall have no fur-  
5 ther recourse, directly or indirectly, under  
6 this title.

7 “(B) REQUIREMENT FOR TIMELY NOTICE  
8 OF MEDICARE REPAYMENTS OWED BY WORK-  
9 ERS' COMPENSATION CLAIMANT OR PAYER TO  
10 SECRETARY.—

11 “(i) IN GENERAL.—Not later than 90  
12 days after the date on which the Secretary  
13 receives a request from a workers' com-  
14 pensation claimant or workers' compensa-  
15 tion payer for documentation of any condi-  
16 tional payment made under subsection  
17 (b)(2)(B)(i) on behalf of the claimant, the  
18 Secretary shall provide to the claimant or  
19 payer such documentation. Such docu-  
20 mentation shall be sufficient for the claim-  
21 ant or payer to make a reasonable deter-  
22 mination whether such a payment was for  
23 an item or service furnished in connection  
24 with the claimant's work related injury or  
25 illness involved. The claimant or payer may

1           rely on the documentation provided under  
2           this clause in making such determination.  
3           Payment of the amount of the conditional  
4           payment, after deducting from such  
5           amount any procurement costs involved  
6           and any costs for unrelated and inappro-  
7           priate items or services, shall discharge  
8           further liability with respect to the condi-  
9           tional payment.

10           “(ii) LIABILITY FOR REIMBURSE-  
11           MENTS RELATED TO REQUESTED INFOR-  
12           MATION.—If the Secretary fails to provide  
13           information in accordance with clause (i),  
14           then neither the claimant nor the payer de-  
15           scribed in such clause shall be liable for  
16           any reimbursement under subsection  
17           (b)(2)(B) with respect to the conditional  
18           payment for which information was re-  
19           quested under such clause.

20           “(C) PROTECTION FROM CERTAIN LIABIL-  
21           ITY.—

22           “(i) LIABILITY FOR MEDICARE SET-  
23           ASIDE PAYMENT GREATER THAN PAYMENT  
24           UNDER WORKERS’ COMPENSATION LAW.—  
25           No workers’ compensation claimant, work-

1           ers' compensation payer, employer, admin-  
2           istrator of the Medicare set-aside, legal  
3           representative of the claimant, payer, em-  
4           ployer, or administrator, or any other  
5           party related to the claimant, payer, em-  
6           ployer, or administrator shall be liable for  
7           any payment amount established under a  
8           Medicare set-aside for an item or service  
9           provided to the claimant that is greater  
10          than the payment amount for the item or  
11          service established under the workers' com-  
12          pensation fee schedule (or in the absence  
13          of such schedule, the medical reimburse-  
14          ment rate) under the compensation law or  
15          plan of the jurisdiction where the agree-  
16          ment will be effective.

17               “(ii) LIABILITY FOR PROVIDER  
18               CHARGES GREATER THAN PAYMENT  
19               UNDER WORKERS' COMPENSATION AGREE-  
20               MENT.—With respect to a workers' com-  
21               pensation settlement agreement, a provider  
22               may not bill (or collect any amount from)  
23               the workers' compensation claimant, work-  
24               ers' compensation payer, employer, admin-  
25               istrator of the Medicare set-aside, legal

1 representative of the claimant, payer, em-  
2 ployer, or administrator, or any other  
3 party related to the claimant, payer, em-  
4 ployer, or administrator an amount for  
5 items and services provided to the claimant  
6 that is greater than the payment rate for  
7 such items and services established under  
8 the Medicare set-aside of the agreement.  
9 No person is liable for payment of any  
10 amounts billed for an item or service in  
11 violation of the previous sentence. If a pro-  
12 vider willfully bills (or collects an amount)  
13 for such an item or service in violation of  
14 such sentence, the Secretary may apply  
15 sanctions against the provider in accord-  
16 ance with section 1842(j)(2) in the same  
17 manner as such section applies with re-  
18 spect to a physician. Paragraph (4) of sec-  
19 tion 1842(j) shall apply under this clause  
20 in the same manner as such paragraph ap-  
21 plies under such section.

22 “(D) AUTHORITY TO MODIFY OR TERMINATE QUALIFIED MEDICARE SET-ASIDES.—

24 “(i) IN CASE OF DEATH OF CLAIM-  
25 ANT.—At any time after the death of a

1 workers' compensation claimant, an indi-  
2 vidual entitled (after such death) to dis-  
3 bursement of the funds remaining in the  
4 Medicare set-aside involved in the workers'  
5 compensation claim of the claimant may  
6 submit to the Secretary a request to termi-  
7 nate the Medicare set-aside upon a show-  
8 ing of the death and payment of all claims  
9 that are subject to this subsection.

10 “(ii) IN THE CASE OF MEDICAL IM-  
11 PROVEMENT OR CHANGE OF CIR-  
12 CUMSTANCES.—At any time after the date  
13 that is five years after the date of quali-  
14 fication of a Medicare set-aside involved,  
15 the workers' compensation claimant in-  
16 volved may submit to the Secretary a re-  
17 quest to modify or terminate the Medicare  
18 set-aside upon a showing of a substantial  
19 medical improvement of the claimant, with  
20 respect to the injury or illness involved, or  
21 of changed circumstances of the claimant  
22 that justify a reduction of the funds of the  
23 Medicare set-aside (as in existence on the  
24 date of such request) by at least 25 per-  
25 cent.

1           “(iii) NOTICE REQUIRED.—The Sec-  
2           retary may not approve a request sub-  
3           mitted under clause (i) or (ii) to modify or  
4           terminate a Medicare set-aside unless the  
5           workers’ compensation claimant involved or  
6           the individual entitled to disbursement (as  
7           described in clause (i)) includes with such  
8           request the following:

9                   “(I) Assurances satisfactory to  
10                  the Secretary that at the time of the  
11                  submission of such request the claim-  
12                  ant or individual entitled to disburse-  
13                  ment sent notice of such request to  
14                  any party that has a reversionary in-  
15                  terest to such request and that is spe-  
16                  cifically designated in the Medicare  
17                  set-aside for receipt of such notice.

18                  “(II) Assurances satisfactory to  
19                  the Secretary that such notice was  
20                  sent by certified mail to the address  
21                  of record of such designated party.

22                  “(III) A copy of such notice.

23           “(iv) PROCESS FOR APPROVAL OF AP-  
24           PLICATIONS TO MODIFY OR TERMINATE  
25           QUALIFIED MEDICARE SET-ASIDES IN THE

1 CASE OF MEDICAL IMPROVEMENT OR  
2 CHANGE OF CIRCUMSTANCES.—Subpara-  
3 graphs (B) and (C) of paragraph (3) shall  
4 apply to requests submitted to the Sec-  
5 retary under clause (ii) to modify or termi-  
6 nate a Medicare set-aside in the same  
7 manner as such subparagraphs apply to  
8 Medicare set-aside agreements submitted  
9 to the Secretary under subparagraph (A)  
10 of such paragraph to be deemed qualified  
11 Medicare set-asides. In applying such sub-  
12 subparagraphs (B) and (C), any reference to  
13 such subparagraph (A) shall be deemed a  
14 reference to clause (ii), and any reference  
15 in such subparagraph (B) to ‘the require-  
16 ments of paragraph (2)(A)’ shall be  
17 deemed to include a reference to the show-  
18 ing required under clause (ii).

19 “(v) EFFECTIVE DATES FOR MODI-  
20 FICATIONS AND TERMINATIONS.—

21 “(I) FOR DEATH OF CLAIM-  
22 ANT.—In the case of a termination re-  
23 quest under clause (i) that is ap-  
24 proved, the termination shall take ef-  
25 fect on the latter of the date on which

1 the showing described in such clause  
2 has been provided to the Secretary, or  
3 the date that is 60 days after the date  
4 on which the individual entitled to dis-  
5 bursement of the funds remaining in  
6 the Medicare set-aside involved sends  
7 the notice under clause (iii) to the  
8 party designated for receipt of such  
9 notice.

10 “(II) FOR MEDICAL IMPROVE-  
11 MENT OR CHANGE OF CIR-  
12 CUMSTANCES.—In the case of a modi-  
13 fication request or termination request  
14 under clause (ii) that is approved ac-  
15 cording to clause (iv), the modification  
16 or termination, respectively, shall take  
17 effect on the latter of the date of the  
18 approval or the date that is 60 days  
19 after the date on which the workers’  
20 compensation claimant involved sends  
21 the notice under clause (iii) to the  
22 party designated for receipt of such  
23 notice.

24 “(vi) TREATMENT OF REMAINING  
25 MEDICARE SET-ASIDE FUNDS.—Upon ter-

1           mination or modification under this para-  
2           graph, any funds released from the set-  
3           aside shall revert pursuant to the terms of  
4           the settlement agreement, or if there is no  
5           reversionary clause, then such remaining  
6           funds shall be disbursed pursuant to the  
7           applicable State law.

8           “(7) TREATMENT OF STATE WORKERS’ COM-  
9           PENSATION LAW.—For purposes of this subsection  
10          and subsection (n), 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 the total amount that could  
19          have been payable for a claim which is the subject  
20          of a compromise agreement in accordance with para-  
21          graph (2)(C)(iii). A determination made by applica-  
22          ble authority for a jurisdiction that a workers’ com-  
23          pensation settlement agreement is in accordance  
24          with the workers’ compensation law of the jurisdic-

1       tion shall not be subject to review by the Sec-  
2       retary.”.

3       (c) CONFORMING AMENDMENTS.—Section 1862(b)  
4 of the Social Security Act (42 U.S.C. 1395y(b)), as  
5 amended by subsection (a), is further amended—

6           (1) in paragraph (2)(B)(ii), by striking “A pri-  
7       mary plan” and inserting “Subject to subsections  
8       (n) and (o), a primary plan”;

9           (2) in paragraph (2)(B)(iii)—

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

14           (B) in the third sentence, by striking “In  
15       addition” and inserting “Subject to subsection  
16       (o), in addition”; and

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

21       (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF  
22 MEDICARE SECONDARY PAYER PROVISIONS.—Paragraph  
23 (2)(A) of such section is amended by striking “workmen’s  
24 compensation law or plan” and inserting “workers’ com-  
25 pensation law or plan” each place it appears.

1 **SEC. 3. LIMITATION ON ADDITIONAL LIABILITY; SEVER-**  
2 **ABILITY.**

3 (a) LIMITATION ON ADDITIONAL LIABILITY UNDER  
4 CURRENT AGREEMENTS EXCEPT FOR FRAUD.—Nothing  
5 in the Medicare secondary payer provisions in section  
6 1862(b) of the Social Security Act (42 U.S.C. 1395y(b))  
7 shall authorize the Secretary of Health and Human Serv-  
8 ices to impose liability that is additional to the liability  
9 in effect on the date of the enactment of this Act with  
10 respect to a workers' compensation settlement agreement  
11 the effective date of which is before such date of enact-  
12 ment, except in the case of fraud.

13 (b) SEVERABILITY.—If any provision of this Act or  
14 the amendments made by this Act or the application there-  
15 of to any person or circumstance is held invalid, the re-  
16 mainder of this Act, the amendments made by this Act,  
17 or the application thereof to other persons not similarly  
18 situated or to other circumstances shall not be affected  
19 by such invalidation.

20 **SEC. 4. EFFECTIVE DATE.**

21 The amendments made by section 2 shall apply to  
22 a workers' compensation settlement agreement with an ef-  
23 fective date on or after the date of the enactment of this  
24 Act.

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