

HR 1063 IH

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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) Short Title- This Act may be cited as the 'Strengthening Medicare And Repaying Taxpayers Act of 2011'.

(b) Table of Contents- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Expediting Secretarial determination of reimbursement amount to improve program efficiency.

Sec. 3. Fiscal efficiency and revenue neutrality.

Sec. 4. Reporting requirement safe harbors.

Sec. 5. Use of social security numbers and other identifying information in reporting.

Sec. 6. Statute of limitations.

## **SEC. 2. EXPEDITING SECRETARIAL DETERMINATION OF REIMBURSEMENT AMOUNT TO IMPROVE PROGRAM EFFICIENCY.**

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

`(vii) TIMELY NOTICE OF CONDITIONAL PAYMENT REIMBURSEMENT-

`(I) REQUEST FOR CONDITIONAL PAYMENT STATEMENT-  
In the case of a payment made by the Secretary pursuant to clause (i) for items and services provided to the claimant, the claimant or applicable plan (as defined in paragraph (8)(F)) may at any time beginning 120 days before the reasonably expected date of a settlement, judgment, award, or other payment, notify the Secretary that a payment is reasonably expected, and request from the Secretary, in accordance with regulations, a statement of the conditional payment reimbursement amount (in this clause referred to as a `statement of reimbursement amount') for any payments subject to reimbursement required under clause (ii). A claimant or applicable plan may request a statement under this subclause only once with respect to such settlement, judgment, award, or other payment.

`(II) SECRETARIAL RESPONSE-

`(aa) IN GENERAL- Not later than 65 days after the date of receipt of a request under subclause (I), the Secretary shall respond to such request with a statement of reimbursement amount, which shall constitute the conditional payment subject to recovery under clause (ii) related to such settlement, judgment, award or other payment.

` (bb) CASE OF SECRETARIAL FAILURE- Subject to subclause (III), if the Secretary fails to provide such a statement of reimbursement amount for items or services subject to reimbursement required under clause (ii) in accordance with this subclause, the claimant, applicable plan, or an entity that receives payment from an applicable plan shall provide an additional notice to the Secretary of such failure. If the Secretary fails to provide a statement of reimbursement amount within 30 days of the date of such additional notice, the claimant, applicable plan, and an entity that receives payment from an applicable plan shall not be liable for and shall not be obligated to make payment subject to this section for any item or service related to the request unless the Secretary demonstrates (in accordance with regulations) that the failure was justified due to exceptional circumstances (as defined in such regulations). Such regulations shall define exceptional circumstances in a manner so that not more than 1 percent of the repayment obligations under this subclause would qualify as exceptional circumstances.

` (III) NOTICE TO SECRETARY- In the event that a settlement, judgment, award, or other payment does not occur (or is no longer reasonably expected to occur) within 120 days of the date of an original request under subclause (I) with respect to a settlement, judgment, award, or other payment, the claimant or the applicable plan shall timely notify the Secretary, and the Secretary shall be exempt from any obligation under subclause (II) with respect to a statement of reimbursement amount relating to such settlement, judgment, award, or other payment related to the notice.

` (IV) EFFECTIVE DATE- The Secretary shall promulgate final regulations to carry out this clause not later than 9 months after the date of the enactment of this clause. Such regulations shall require the disclosure from a claimant or applicable plan of no more than the minimum amount of information necessary for the Secretary to determine the amount of conditional payment subject to recovery under clause (ii) related to such settlement, judgment, award, or other payment, and may require partial disclosure (but may not require full disclosure) of social security numbers or health identification claim numbers.

` (viii) RIGHT OF APPEAL- The Secretary shall promulgate

regulations establishing a right of appeal and appeals process, with respect to any determination under this subsection for a payment made under this title for an item or service under a primary plan, under which the applicable plan involved, or an attorney, agent, or third party administrator on behalf of such applicable plan, may appeal such determination. Such right of appeal shall--

`(I) include review through an administrative law judge and administrative review board, and access to judicial review in the district court of the United States for the judicial district in which the appellant is located (or, in the case of an action brought jointly by more than one applicant, the judicial district in which the greatest number of applicants are located) or in the District Court for the District of Columbia; and

`(II) be carried out in a manner similar to the appeals procedure under regulations for hearing procedures respecting notices of determinations of nonconformance of group health plans under this subsection.'.

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

(a) In General- Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended--

(1) in paragraph (2)(B)(ii), by striking 'A primary plan' and inserting 'Subject to paragraph (9), a primary plan'; and

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

`(9) EXCEPTION-

`(A) IN GENERAL- Clause (ii) of paragraph (2)(B) and any reporting required by paragraph (8) shall not apply with respect to any settlement, judgment, award, or other payment by an applicable plan constituting a total payment obligation to a claimant of not more than the single threshold amount calculated by the Chief Actuary of the Centers for Medicare & Medicaid Services under subparagraph (B) for the year involved.

`(B) ANNUAL COMPUTATION OF THRESHOLDS- Not later than

November 15 before each year, the Chief Actuary of the Centers for Medicare & Medicaid Services shall calculate and publish a single threshold amount for settlements, judgments, awards or other payments for conditional payment obligations arising from each of liability insurance (including self-insurance), workers' compensation laws or plans, and no fault insurance subject to this section for that year. Each such annual single threshold amount for a year shall be set such that the expected average amount to be credited to the Medicare trust funds of collections of conditional payments from such settlements, judgments, awards, or other payments for each of liability insurance (including self-insurance), workers' compensation laws or plans, and no fault insurance subject to this section shall equal the expected average cost of collection incurred by the United States (including payments made to contractors) for a conditional payment from each of liability insurance (including self-insurance), workers' compensation laws or plans, and no fault insurance subject to this section for the year. The Chief Actuary shall include, as part of such publication for a year--

` (i) the expected average cost of collection incurred by the United States (including payments made to contractors) for a conditional payment arising from each of liability insurance (including self-insurance), no fault insurance, and workers' compensation laws or plans; and

` (ii) a summary of the methodology and data used by such Chief Actuary in computing the threshold amount and such average cost of collection.

` (C) TREATMENT OF ONGOING EXPENSES- For purposes of this paragraph and with respect to a settlement, judgment, award, or other payment not otherwise addressed in clause (ii) of paragraph (2)(B) involving the ongoing responsibility for medical payments, such payment shall include only the cumulative value of the medical payments made and the purchase price of any annuity or similar instrument.'

(b) Effective Date- The amendments made by subsection (a) shall apply to years beginning more than 4 1/2 months after the date of the enactment of this Act.

#### **SEC. 4. REPORTING REQUIREMENT SAFE HARBORS.**

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

(1) in the first sentence of subparagraph (E)(i), by striking `shall be subject' and all that follows through the end of the sentence and inserting the following: `may be subject to a civil money penalty of up to \$1,000 for each day of noncompliance. The severity of each such penalty shall be based on the knowing, willful, and repeated nature of the violation.'; and

(2) by adding at the end the following new subparagraph:

`(I) ESTABLISHMENT OF SAFE HARBORS- Not later than 60 days after the date of the enactment of this subparagraph, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for the specification of practices for which sanctions will not be imposed under subparagraph (E), including for good faith efforts to identify a beneficiary pursuant to this paragraph under an applicable entity responsible for reporting information, under which this paragraph will be deemed to have complied with the reporting requirements under this paragraph and will not be subject to such sanctions. After considering the proposals so submitted, the Secretary, in consultation with the Attorney General, shall publish in the Federal Register, including a 60-day period for comment, proposed specified practices for which such sanctions will not be imposed. After considering any public comments received during such period, the Secretary shall issue final rules specifying such practices.'.

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

Section 1862(b)(8)(B) of the Social Security Act (42 U.S.C. 1395y(b)(8)(B)) is amended by adding at the end (after and below clause (ii)) the following: `Not later than 1 year after the date of enactment of this sentence, the Secretary shall modify the reporting requirements under this paragraph so that an applicable plan in complying with such requirements is permitted but

not required to access or report to the Secretary beneficiary social security account numbers or health identification claim numbers.'

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

(a) In General- Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended--

(1) in paragraph (2)(B)(iii), by adding at the end the following new sentence: `An action may not be brought by the United States under this clause with respect to payment owed unless the complaint is filed not later than 3 years after the date of the receipt of notice of a settlement, judgment, award, or other payment made pursuant to paragraph (8) relating to such payment owed.'; and

(2) in paragraph (8)(E)(i), by adding at the end the following new sentence: `A civil money penalty may not be imposed under this clause with respect to failure to submit required information unless service of notice of intention to impose the penalty is provided not later than 3 years after the date by which the information was required to be submitted.'

(b) Effective Date- The amendments made by subsection (a) shall apply with respect to actions brought and penalties sought on or after 6 months after the date of the enactment of this Act.

*END*

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