To amend title XVIII of the Social Security Act to provide for the application of Medicare secondary payer rules to certain workers’ compensation settlement agreements and qualified Medicare set-aside provisions.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2015

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.

A BILL

To amend title XVIII of the Social Security Act to provide for the application of Medicare secondary payer rules to certain workers’ compensation settlement agreements and qualified Medicare set-aside provisions.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Medicare Secondary Payer and Workers’ Compensation Settlement Agreements Act of 2015”.

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SEC. 2. APPLICATION OF MEDICARE SECONDARY PAYER RULES TO CERTAIN WORKERS’ COMPENSATION SETTLEMENT AGREEMENTS AND QUALIFIED MEDICARE SET-ASIDE PROVISIONS.

(a) Threshold for Secondary Payer Provisions for Certain Workers’ Compensation Settlement Agreements.—Section 1862 of the Social Security Act (42 U.S.C. 1395y) is amended—

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

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

“(p) Threshold for Secondary Payer Provisions for Certain Workers’ Compensation Settlement Agreements.—

“(1) In general.—A workers’ compensation law or plan shall not be treated as a primary plan for purposes of subsection (b) with respect to a workers’ compensation settlement agreement if the agreement (or claimant under the agreement) meets any of the following requirements:

“(A) Total settlement amount not exceeding $25,000.—Such agreement has a total settlement amount (as determined under paragraph (2)) that does not exceed $25,000 or
such greater amount as the Secretary may specify in regulations.

“(B) LIKELY INELIGIBILITY OF WORKERS’ COMPENSATION CLAIMANT FOR MEDICARE BENEFITS.—The claimant subject to such agreement—

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

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

“(C) NO FUTURE WORKERS’ COMPENSATION MEDICAL EXPENSES.—The claimant subject to such agreement is not eligible for payment of medical expenses incurred after the effective date of the agreement from the workers’ compensation law or plan of the jurisdiction in which such agreement will be effective.

“(D) NO LIMITATION ON FUTURE WORKERS’ COMPENSATION MEDICAL EXPENSES.—Such agreement does not limit or extinguish the right of the claimant to payment of medical expenses incurred after the effective date of such agreement by the workers’ compensation law or
plan of the jurisdiction in which the agreement will be effective.

“(2) Determination of total settlement amount of workers’ compensation settlement agreement.—For purposes of paragraph (1)(A) and subsection (q) and with respect to a work-related injury or illness that is the subject of a workers’ compensation settlement agreement, the total settlement amount of the agreement is the sum of monetary wage replacement benefits, attorney fees, all future medical expenses, repayment of Medicare conditional payments, payout totals for annuities to fund the expenses listed above, and any previously settled portion of the workers’ compensation claim.

“(3) Determination of likely ineligibility of claimant for Medicare benefits.—For purposes of paragraph (1)(B)(ii), a workers’ compensation claimant shall be deemed unlikely to become eligible for benefits under this title within 30 months after the effective date of the agreement unless, as of the effective date of the agreement, such claimant is insured for disability insurance benefits under section 223(c)(1) and is described in any of the following subparagraphs:
“(A) Awarded disability benefits.—The individual has been awarded such disability insurance benefits.

“(B) Applied for disability.—The individual has applied for such disability insurance benefits.

“(C) Anticipates appeal.—The individual has been denied such disability insurance benefits but anticipates appealing that decision.

“(D) Appealing or refiling.—The individual is in the process of appealing or refiling for such disability insurance benefits.

“(E) Minimum age.—The individual is at least 62 years and 6 months of age.

“(F) End-stage renal disease.—The individual is medically determined to have end-stage renal disease but does not yet qualify for health benefits under section 226A based on such disease.

“(4) Definitions.—For purposes of this subsection and subsection (q):

“(A) Compromise agreement.—The term ‘compromise agreement’ means a workers’ compensation settlement agreement that—
“(i) applies to a workers’ compensation claim that is denied or contested, in whole or in part, by a workers’ compensation payer involved under the workers’ compensation law or plan applicable to the jurisdiction in which the agreement has been settled; and

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

“(B) Commutation Agreement.—The term ‘commutation agreement’ means a workers’ compensation settlement agreement to settle all or a portion of a workers’ compensation claim, in which—

“(i) liability for past and future benefits is not disputed; and

“(ii) the parties to the agreement agree to include payment for future workers’ compensation benefits payable after the date on which the agreement becomes effective.
“(C) WORKERS’ COMPENSATION CLAIMANT.—The term ‘workers’ compensation claimant’ means a worker who—

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

“(ii) submits a claim or accepts benefits under such law or plan for a work-related injury or illness.

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

“(i) IN GENERAL.—The term ‘workers’ compensation law or plan’ means a law or program administered by a State or the United States to provide compensation to workers for a work-related injury or illness (or for disability or death caused by such an injury or illness), including the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 901–944, 948–950), chapter 81 of title 5, United States Code (known as the Federal Employees Compensation Act), the Black Lung Benefits Act (30 U.S.C. 931 et seq.), and part C of title 4 of the Federal Coal Mine and Safety Act (30 U.S.C. 901 et seq.), but not
including the Act of April 22, 1908 (45
U.S.C. 51 et seq.) (popularly referred to as
the Federal Employer’s Liability Act).

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

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

“(F) WORKERS’ COMPENSATION SETTLE-
MENT AGREEMENT.—The term ‘workers’ com-
pensation settlement agreement’ means an
agreement, which includes a commutation
agreement or compromise agreement, or any
combination of both, between a claimant and
one or more workers’ compensation payers which—

“(i) forecloses the possibility of future payment of some or all workers’ compensation benefits involved; and

“(ii)(I) compensates the claimant for a work-related injury or illness as provided for by a workers’ compensation law or plan; or

“(II) eliminates cause for litigation involving issues in dispute between the claimant and payer.”.

(b) Satisfactory of Secondary Payer Requirements Through Use of Qualified Medicare Set-Asides Under Workers’ Compensation Settlement Agreements.—Section 1862 of the Social Security Act (42 U.S.C. 1395y), as amended by subsection (a), is further amended by adding at the end the following new subsection:

“(q) Treatment of Qualified Medicare Set-Asides Under Workers’ Compensation Settlement Agreements.—

“(1) Satisfaction of Secondary Payer Requirements Through Use of Qualified Medicare Set-Asides.—
“(A) Full satisfaction of claim obligations.—

“(i) In general.—If a workers’ compensation settlement agreement, related to a claim of a workers’ compensation claimant, includes a qualified Medicare set-aside (as defined in paragraph (2)), such set-aside shall satisfy any obligation with respect to the future payment reimbursement under subsection (b)(2) with respect to such claim.

“(ii) Rule of construction.—Nothing in this section shall be construed as requiring the submission of a Medicare set-aside to the Secretary.

“(B) Medicare set-aside and Medicare set-aside amount defined.—For purposes of this subsection:

“(i) Medicare set-aside.—The term ‘Medicare set-aside’ means, with respect to a workers’ compensation settlement agreement, a provision in the agreement that provides for a payment of a lump sum, annuity, a combination of a lump sum and an annuity, or other
amount that is in full satisfaction of the
obligation described in subparagraph (A)
for items and services that the workers’
compensation claimant under the agree-
ment received or is likely to receive under
the applicable workers’ compensation law
and for which payment would be made
under this title, but for subsection
(b)(2)(A).

“(ii) Medicare set-aside
amount.—The term ‘Medicare set-aside
amount’ means, with respect to a Medicare
set-aside, the actual dollar amount pro-
vided for in clause (i).

“(2) Qualified Medicare set-aside.—

“(A) Requirements of qualified medi-
care set-aside.—For purposes of this sub-
section, a Medicare set-aside shall be deemed to
be a qualified Medicare set-aside if the Medi-
care set-aside amount reasonably takes into ac-
count the full payment obligation described in
paragraph (1)(A), while meeting the require-
ments of subparagraphs (B) and (C) and is de-
termined based on the following:
“(i) The illness or injury giving rise to the workers’ compensation claim involved.

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

“(iii) The reasonableness of and necessity for future medical expenses for treatment of the illness or injury involved.

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

“(v) The regulations and case law relevant to the State workers’ compensation law or plan involved.

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

“(i) shall include payment for items and services that are covered and otherwise payable under this title as of the effective date of the workers’ compensation settlement agreement and that are covered by the workers’ compensation law or plan; and

“(ii) is not required to provide for payment for items and services that are not described in clause (i).
“(C) Payment requirements.—

“(i) Required use of workers’ compensation fee schedule.—

“(I) In general.—Except in the case of an optional direct payment of a Medicare set-aside made under paragraph (5)(A), the set-aside amount shall be based upon the payment amount for items and services under the workers’ compensation fee schedule (effective as of the date of the agreement) applicable to the workers’ compensation law or plan involved.

“(II) Workers’ compensation fee schedule defined.—For purposes of this subsection, the term ‘workers’ compensation fee schedule’ means, with respect to a workers’ compensation law or plan of a State or a similar plan applicable in a State, the schedule of payment amounts the State has established to pay providers for items and services furnished to workers who incur a work-related in-
jury or illness as defined under such
law or plan (or in the absence of such
a schedule, the applicable medical re-
imbursement rate under such law or
plan).

“(ii) **OPTIONAL PROPORTIONAL AD-
JUSTMENT FOR COMPROMISE SETTLEMENT
AGREEMENTS.—

“(I) **IN GENERAL.—In the case
of a compromise settlement agree-
ment, a claimant or workers’ com-
pensation payer who is party to the
agreement may elect to calculate the
Medicare set-aside amount of the
agreement by applying a percentage
reduction to the Medicare set-aside
amount for the total settlement
amount that could have been payable
under the applicable workers’ com-
pensation law or similar plan involved
had the denied, disputed, or contested
portion of the claim not been subject
to a compromise agreement. The per-
centage reduction shall be equal to the
denied, disputed, or contested percent-

age of such total settlement. Such election may be made by a party to the agreement only with the written consent of the other party to the agreement.

“(II) APPLICATION.—If the claimant or workers’ compensation payer elects to calculate the Medicare set-aside amount under this clause, the Medicare set-aside shall be deemed a qualified Medicare set-aside.

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

“(A) OPTIONAL PRIOR APPROVAL BY SECRETARY.—A party to a workers’ compensation settlement agreement that includes a Medicare set-aside may submit to the Secretary the Medicare set-aside amount for approval of the set-aside as a qualified Medicare set-aside.

“(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 agree-
ment of the determination of approval or dis-
approval. If the determination disapproves such
submission the Secretary shall include with
such notification the specific reasons for the
disapproval.

“(C) FAILURE BY SECRETARY TO PROVIDE
NOTICE.—In the case of a failure by the Sec-
retary to mail or deliver the notice of the deter-
mination under subparagraph (B) by the last
day of the period described in such subpara-
graph, the party involved may file an appeal di-
rectly to the administrative law judge within 30
days after such failure.

“(4) APPEALS.—

“(A) IN GENERAL.—A party to a workers’
compensation settlement agreement that is dis-
satisfied 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 determina-
tion by the Secretary (with respect to such
determination);
“(ii) a hearing before an administrative law judge thereon after such reconsideration; and

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

“(B) Deadlines for decisions.—

“(i) Reconsiderations.—

“(I) In general.—The Secretary shall conduct and conclude a reconsideration of a determination under subparagraph (A)(i) and mail or deliver electronically the notice of the decision of such reconsideration to the party involved by not later than the last day of the 30-day period beginning on the date that a request for such reconsideration has been timely filed.

“(II) Appeals of reconsiderations.—If a party to the workers’ compensation settlement involved is dissatisfied with the Secretary’s decision under subclause (I) that party may file an appeal within the 30-day period after the date of receipt of the
notice of the decision under such sub-
clause and request a hearing before
an administrative law judge.

“(III) Failure by secretary
to provide notice.—In the case of
a failure by the Secretary to mail or
deliver the notice of the decision
under subclause (I) by the last day of
the period described in such sub-
clause, the party involved may file an
appeal directly to an administrative
law judge not later than 30 days after
such failure.

“(ii) Hearings.—

“(I) In general.—An adminis-
trative law judge shall conduct and
conclude a hearing on a decision of
the Secretary or a determination with
respect to which the Secretary failed
to render a decision under paragraph
(3)(B) or clause (i) and render a deci-
sion on such hearing by not later than
the last day of the 90-day period be-
ginning on the date that a request for
such hearing has been timely filed.
“(II) Judicial review.—A decision under subclause (I) by an administrative law judge constitutes a final agency action and is subject to judicial review.

“(III) Failure by administrative law judge to render timely decision.—In the case of a failure by an administrative law judge to render a decision under subclause (I) by the last day of the period described in such subclause, the party requesting the hearing shall be entitled to judicial review of the decision under subparagraph (A), notwithstanding any requirements for a hearing for purposes of the party’s right to such judicial review.

“(5) Administration of Medicare set-aside provisions; protection from certain liability.—

“(A) Optional direct payment of Medicare set-aside amount.—

“(i) Election for direct payment of Medicare set-aside.—Effective 30
days after the date of enactment of this subsection, with respect to a claim for which a workers’ compensation settlement agreement is or has been established, a claimant or workers’ compensation payer who is party to the agreement may elect, but is not required, to transfer to the Secretary a direct payment of the qualified Medicare set-aside. With respect to a qualified Medicare set-aside paid directly to the Secretary, the parties involved may calculate the Medicare set-aside amount of such set-aside using any of the following methods:

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

“(II) In the case of any Medicare set-aside, the amount based upon the payment amount for items and services under the workers’ compensation fee schedule (effective as of the date of the agreement) applicable to the
workers’ compensation law or plan involved, in accordance with paragraph (2)(C)(i)(I).

“(III) In the case of any Medicare set-aside, the payment amount applicable to the items and services under this title as in effect on the effective date of the agreement.

Such transfer shall be made only upon written consent of the other party to the agreement.

“(ii) ELECTION SATISFYING LIABILITY.—An election made under clause (i), with respect to a qualified Medicare set-aside shall satisfy any payment, in relation to the underlying claim of the related workers’ compensation settlement agreement, required under subsection (b)(2) to be made by the claimant or payer to the Secretary.

“(B) PROTECTION FROM CERTAIN LIABILITY.—

“(i) LIABILITY FOR MEDICARE SET-ASIDE PAYMENT GREATER THAN PAYMENT UNDER WORKERS’ COMPENSATION LAW.—
No workers’ compensation claimant, workers’ compensation payer, employer, administrator of the Medicare set-aside, legal representative of the claimant, payer, employer, or administrator, or any other party related to the claimant, payer, employer, or administrator shall be liable for any payment amount established under a Medicare set-aside for an item or service provided to the claimant that is greater than the payment amount for the item or service established under the workers’ compensation fee schedule (or in the absence of such schedule, the medical reimbursement rate) under the compensation law or plan of the jurisdiction where the agreement will be effective.

“(ii) Liability for Provider Charges Greater Than Payment Under Workers’ Compensation Agreement.—With respect to a workers’ compensation settlement agreement, a provider may not bill (or collect any amount from) the workers’ compensation claimant, workers’ compensation payer, employer, admin-
istrator of the Medicare set-aside, legal representative of the claimant, payer, employer, or administrator, or any other party related to the claimant, payer, employer, or administrator an amount for items and services provided to the claimant that is greater than the payment rate for such items and services established under the Medicare set-aside of the agreement.

No person is liable for payment of any amounts billed for an item or service in violation of the previous sentence. If a provider willfully bills (or collects an amount) for such an item or service in violation of such sentence, the Secretary may apply sanctions against the provider in accordance with section 1842(j)(2) in the same manner as such section applies with respect to a physician. Paragraph (4) of section 1842(j) shall apply under this clause in the same manner as such paragraph applies under such section.

“(C) Election of professional or beneficiary self administration of Medicare set-aside payments.—Nothing in this
subsection or subsection (p) prohibits an individual from electing to utilize professional administration services or to self-administer payments of their Medicare Set-Aside in accordance with existing law.

“(6) TREATMENT OF STATE WORKERS’ COMPENSATION LAW.—For purposes of this subsection and subsection (p), if a workers’ compensation settlement agreement is accepted, reviewed, approved, or otherwise finalized in accordance with the workers’ compensation law of the jurisdiction in which such agreement will be effective, such acceptance, review, approval, or other finalization shall be deemed final and conclusive as to any and all matters within the jurisdiction of the workers’ compensation law, including the determination of reasonableness of the settlement value; any allocations of settlement funds; the projection of future indemnity or medical benefits that may be reasonably expected to be paid under the State workers’ compensation law; and, in the case of a compromise agreement, the total amount that could have been payable for a claim which is the subject of such agreement in accordance with paragraph (2)(C)(ii).”
(c) CONFORMING AMENDMENTS.—Subsection (b) of such section is further amended—

(1) in paragraph (2)(B)(ii), by striking “paragraph (9)” and inserting “paragraph (9) and subsections (p) and (q)”;

(2) in paragraph (2)(B)(iii)—

(A) in the first sentence, by striking “In order to recover payment” and inserting “Subject to subsection (q), in order to recover payment”; and

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

(3) in paragraph (3)(A), by striking “There is established a private cause of action” and inserting “Subject to subsection (q), there is established a private cause of action”.

(d) MODERNIZING TERMINOLOGY FOR PURPOSES OF MEDICARE SECONDARY PAYER PROVISIONS.—Subsection (b)(2)(A) of such section is amended by striking “workmen’s compensation law or plan” and inserting “workers’ compensation law or plan” each place it appears.

(e) LIMITATION ON LIABILITY.—The parties to a workers’ compensation settlement agreement which met the provisions of section 1862(b) of the Social Security
Act (42 U.S.C. 1395y(b)) on the effective date of settlement shall be accepted as meeting the requirements of such section notwithstanding changes in law, regulations, or administrative interpretation of such provisions after the effective date of such settlement.

(f) EFFECTIVE DATE.—The amendments made by this section, unless otherwise specifically specified, shall apply to a workers’ compensation settlement agreement with an effective date on or after October 1, 2015.