

112TH CONGRESS
1ST SESSION

S. 1718

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2011

Mr. WYDEN (for himself, Mr. PORTMAN, Mr. NELSON of Nebraska, and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Strengthening Medicare And Repaying Taxpayers Act of
6 2011”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 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.

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

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

7 “(vii) TIMELY NOTICE OF CONDI-
 8 TIONAL PAYMENT REIMBURSEMENT.—

9 “(I) REQUEST FOR CONDITIONAL
 10 PAYMENT STATEMENT.—In the case
 11 of a payment made by the Secretary
 12 pursuant to clause (i) for items and
 13 services provided to the claimant, the
 14 claimant or applicable plan (as de-
 15 fined in paragraph (8)(F)) may at
 16 any time beginning 120 days before
 17 the reasonably expected date of a set-
 18 tlement, judgment, award, or other
 19 payment, notify the Secretary that a
 20 payment is reasonably expected, and
 21 request from the Secretary, in accord-
 22 ance with regulations, a statement of

1 the conditional payment reimburse-
2 ment amount (in this clause referred
3 to as a ‘statement of reimbursement
4 amount’) for any payments subject to
5 reimbursement required under clause
6 (ii). A claimant or applicable plan
7 may request a statement under this
8 subclause only once with respect to
9 such settlement, judgment, award, or
10 other payment.

11 “(II) SECRETARIAL RESPONSE.—

12 “(aa) IN GENERAL.—Not
13 later than 65 days after the date
14 of receipt of a request under sub-
15 clause (I), the Secretary shall re-
16 spond to such request with a
17 statement of reimbursement
18 amount, which shall constitute
19 the conditional payment subject
20 to recovery under clause (ii) re-
21 lated to such settlement, judg-
22 ment, award or other payment.

23 “(bb) CASE OF SECRE-
24 TARIAL FAILURE.—Subject to
25 subclause (III), if the Secretary

1 fails to provide such a statement
2 of reimbursement amount for
3 items or services subject to reim-
4 bursement required under clause
5 (ii) in accordance with this sub-
6 clause, the claimant, applicable
7 plan, or an entity that receives
8 payment from an applicable plan
9 shall provide an additional notice
10 to the Secretary of such failure.
11 If the Secretary fails to provide a
12 statement of reimbursement
13 amount within 30 days of the
14 date of such additional notice,
15 the claimant, applicable plan, and
16 an entity that receives payment
17 from an applicable plan shall not
18 be liable for and shall not be obli-
19 gated to make payment subject
20 to this section for any item or
21 service related to the request un-
22 less the Secretary demonstrates
23 (in accordance with regulations)
24 that the failure was justified due
25 to exceptional circumstances (as

1 defined in such regulations).
2 Such regulations shall define ex-
3 ceptional circumstances in a
4 manner so that not more than 1
5 percent of the repayment obliga-
6 tions under this subclause would
7 qualify as exceptional cir-
8 cumstances.

9 “(III) NOTICE TO SECRETARY.—

10 In the event that a settlement, judg-
11 ment, award, or other payment does
12 not occur (or is no longer reasonably
13 expected to occur) within 120 days of
14 the date of an original request under
15 subclause (I) with respect to a settle-
16 ment, judgment, award, or other pay-
17 ment, the claimant or the applicable
18 plan shall timely notify the Secretary,
19 and the Secretary shall be exempt
20 from any obligation under subclause
21 (II) with respect to a statement of re-
22 imbursement amount relating to such
23 settlement, judgment, award, or other
24 payment related to the notice.

1 “(IV) EFFECTIVE DATE.—The
2 Secretary shall promulgate final regu-
3 lations to carry out this clause not
4 later than 9 months after the date of
5 the enactment of this clause. Such
6 regulations shall require the disclosure
7 from a claimant or applicable plan of
8 no more than the minimum amount of
9 information necessary for the Sec-
10 retary to determine the amount of
11 conditional payment subject to recov-
12 ery under clause (ii) related to such
13 settlement, judgment, award, or other
14 payment, and may require partial dis-
15 closure (but may not require full dis-
16 closure) of social security numbers or
17 health identification claim numbers.

18 “(viii) RIGHT OF APPEAL.—The Sec-
19 retary shall promulgate regulations estab-
20 lishing a right of appeal and appeals proc-
21 ess, with respect to any determination
22 under this subsection for a payment made
23 under this title for an item or service
24 under a primary plan, under which the ap-
25 plicable plan involved, or an attorney,

1 agent, or third party administrator on be-
2 half of such applicable plan, may appeal
3 such determination. Such right of appeal
4 shall—

5 “(I) include review through an
6 administrative law judge and adminis-
7 trative review board, and access to ju-
8 dicial review in the district court of
9 the United States for the judicial dis-
10 trict in which the appellant is located
11 (or, in the case of an action brought
12 jointly by more than one applicant,
13 the judicial district in which the
14 greatest number of applicants are lo-
15 cated) or in the District Court for the
16 District of Columbia; and

17 “(II) be carried out in a manner
18 similar to the appeals procedure under
19 regulations for hearing procedures re-
20 specting notices of determinations of
21 nonconformance of group health plans
22 under this subsection.”.

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

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

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

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

6 “(9) EXCEPTION.—

7 “(A) IN GENERAL.—Clause (ii) of para-
8 graph (2)(B) and any reporting required by
9 paragraph (8) shall not apply with respect to
10 any settlement, judgment, award, or other pay-
11 ment by an applicable plan constituting a total
12 payment obligation to a claimant of not more
13 than the single threshold amount calculated by
14 the Chief Actuary of the Centers for Medicare
15 & Medicaid Services under subparagraph (B)
16 for the year involved.

17 “(B) ANNUAL COMPUTATION OF THRESH-
18 OLDS.—Not later than November 15 before
19 each year, the Chief Actuary of the Centers for
20 Medicare & Medicaid Services shall calculate
21 and publish a single threshold amount for set-
22 tlements, judgments, awards or other payments
23 for conditional payment obligations arising from
24 each of liability insurance (including self-insur-
25 ance), workers’ compensation laws or plans, and

1 no fault insurance subject to this section for
2 that year. Each such annual single threshold
3 amount for a year shall be set such that the ex-
4 pected average amount to be credited to the
5 Medicare trust funds of collections of condi-
6 tional payments from such settlements, judg-
7 ments, awards, or other payments for each of li-
8 ability insurance (including self-insurance),
9 workers' compensation laws or plans, and no
10 fault insurance subject to this section shall
11 equal the expected average cost of collection in-
12 curred by the United States (including pay-
13 ments made to contractors) for a conditional
14 payment from each of liability insurance (in-
15 cluding self-insurance), workers' compensation
16 laws or plans, and no fault insurance subject to
17 this section for the year. The Chief Actuary
18 shall include, as part of such publication for a
19 year—

20 “(i) the expected average cost of col-
21 lection incurred by the United States (in-
22 cluding payments made to contractors) for
23 a conditional payment arising from each of
24 liability insurance (including self-insur-

1 ance), no fault insurance, and workers'
2 compensation laws or plans; and

3 “(ii) a summary of the methodology
4 and data used by such Chief Actuary in
5 computing the threshold amount and such
6 average cost of collection.

7 “(C) TREATMENT OF ONGOING EX-
8 PENSES.—For purposes of this paragraph and
9 with respect to a settlement, judgment, award,
10 or other payment not otherwise addressed in
11 clause (ii) of paragraph (2)(B) involving the on-
12 going responsibility for medical payments, such
13 payment shall include only the cumulative value
14 of the medical payments made and the purchase
15 price of any annuity or similar instrument.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall apply to years beginning more than
18 4½ months after the date of the enactment of this Act.

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

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

22 (1) in the first sentence of subparagraph (E)(i),
23 by striking “shall be subject” and all that follows
24 through the end of the sentence and inserting the
25 following: “may be subject to a civil money penalty

1 of up to \$1,000 for each day of noncompliance. The
2 severity of each such penalty shall be based on the
3 knowing, willful, and repeated nature of the viola-
4 tion.”; and

5 (2) by adding at the end the following new sub-
6 paragraph:

7 “(I) ESTABLISHMENT OF SAFE
8 HARBORS.—Not later than 60 days
9 after the date of the enactment of this
10 subparagraph, the Secretary shall
11 publish a notice in the Federal Reg-
12 ister soliciting proposals, which will be
13 accepted during a 60-day period, for
14 the specification of practices for which
15 sanctions will not be imposed under
16 subparagraph (E), including for good
17 faith efforts to identify a beneficiary
18 pursuant to this paragraph under an
19 applicable entity responsible for re-
20 porting information, under which this
21 paragraph will be deemed to have
22 complied with the reporting require-
23 ments under this paragraph and will
24 not be subject to such sanctions. After
25 considering the proposals so sub-

1 mitted, the Secretary, in consultation
2 with the Attorney General, shall pub-
3 lish in the Federal Register, including
4 a 60-day period for comment, pro-
5 posed specified practices for which
6 such sanctions will not be imposed.
7 After considering any public com-
8 ments received during such period, the
9 Secretary shall issue final rules speci-
10 fying such practices.”.

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

13 Section 1862(b)(8)(B) of the Social Security Act (42
14 U.S.C. 1395y(b)(8)(B)) is amended by adding at the end
15 (after and below clause (ii)) the following: “Not later than
16 1 year after the date of enactment of this sentence, the
17 Secretary shall modify the reporting requirements under
18 this paragraph so that an applicable plan in complying
19 with such requirements is permitted but not required to
20 access or report to the Secretary beneficiary social security
21 account numbers or health identification claim numbers.”.

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

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

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

9 (2) in paragraph (8)(E)(i), by adding at the
10 end the following new sentence: “A civil money pen-
11 alty may not be imposed under this clause with re-
12 spect to failure to submit required information un-
13 less service of notice of intention to impose the pen-
14 alty is provided not later than 3 years after the date
15 by which the information was required to be sub-
16 mitted.”.

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

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