

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.

○