

109TH CONGRESS
2^D SESSION

H. R. 5309

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2006

Mr. SHAW (for himself, Mr. TANNER, Mr. HAYWORTH, Mr. WELLER, Mr. FOLEY, Ms. HART, and Mr. CHOCOLA) 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 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 2006".

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 (l),” after “(ii)”; and

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

14 “(l) 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 LESS THAN
2 \$250,000.—A workers’ compensation settlement
3 agreement that has a present value, as deter-
4 mined under paragraph (3)(A), that is less than
5 the greater of the following:

6 “(i) \$250,000.

7 “(ii) The product (as published under
8 paragraph (3)(B)) of \$250,000 and the
9 ratio of—

10 “(I) the national average wage
11 index (as defined in section 209(k)(1)
12 of the Social Security Act) for the cal-
13 endar year before the calendar year in
14 which the workers’ compensation set-
15 tlement agreement became effective,
16 to

17 “(II) the national average wage
18 index for 2004,
19 with such product, if not a multiple of
20 \$1,000, being rounded to the next higher
21 multiple of \$1,000.

22 “(B) COMPROMISE AGREEMENT.—A work-
23 ers’ compensation settlement agreement that is
24 a compromise agreement (as defined in para-
25 graph (5)) that has a present value that is not

1 more than 20 percent of the present value of
2 the total amount that could have been payable
3 under the applicable workers' compensation law
4 or similar plan if the claim involved had not
5 been subject to a compromise agreement.

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

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

22 “(E) NO LIMITATION ON FUTURE MEDICAL
23 EXPENSES.—A workers’ compensation settle-
24 ment agreement that does not limit or extin-
25 guish the right of the claimant involved to pay-

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

6 “(3) DETERMINATION OF PRESENT VALUE OF
7 WORKERS' COMPENSATION SETTLEMENT AGREE-
8 MENT.—

9 “(A) BY COST OF ANNUITY TO FUND
10 AGREEMENT.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii), for purposes of paragraphs (2)(A) and
13 (2)(B) and subsection (m) and with re-
14 spect to a work-related injury or illness
15 that is the subject of a workers' compensa-
16 tion settlement agreement, the present
17 value of the agreement is the sum of any
18 of the following amounts that are used to
19 fund the agreement:

20 “(I) The amount of any cash
21 payment.

22 “(II) The amount of the pur-
23 chase cost of an annuity (and not the
24 payout or the projected payout paid
25 during the term of such annuity).

1 “(III) The amount of the sum of
2 any funds under subclause (I) or (II),
3 previously paid pursuant to a workers’
4 compensation settlement agreement
5 involved in the workers’ compensation
6 claim involved.

7 “(ii) COSTS EXCLUDED FROM
8 PRESENT VALUE.—The present value of a
9 workers’ compensation settlement agree-
10 ment does not include the following pay-
11 ments made because of the workers’ com-
12 pensation claim involved:

13 “(I) Payments to satisfy previous
14 unpaid medical expenses.

15 “(II) Payments to satisfy third
16 party claims or liens for amounts pre-
17 viously paid, such as payments under
18 this title, payments under the Med-
19 icaid program under title XIX, pay-
20 ments under a program of the De-
21 partment of Veterans Affairs under
22 title 38, United States Code, pay-
23 ments under an employee welfare ben-
24 efit plan (as defined in section 3(1) of
25 the Employee Retirement and Income

1 Security Act of 1974), and other simi-
2 lar third party payments.

3 “(III) The attorney fees for the
4 claimant involved.

5 “(IV) Any other procurement
6 costs incurred by a party to the agree-
7 ment to secure the agreement.

8 “(B) PUBLICATION IN FEDERAL REGISTER
9 OF AMOUNT OF PRESENT VALUE ADJUSTED
10 FOR INFLATION.—Not later than November 15
11 of each year (beginning with 2006), the Sec-
12 retary shall determine and provide for publica-
13 tion in the Federal Register of the amount de-
14 scribed in paragraph (2)(A)(ii) for the suc-
15 ceeding year.

16 “(4) DETERMINATION OF LIKELY INELIGI-
17 BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—
18 For purposes of paragraph (2)(C), a workers’ com-
19 pensation claimant shall be deemed unlikely to be-
20 come eligible for benefits under this title unless, as
21 of the effective date of the agreement, such claimant
22 is insured for disability insurance benefits as deter-
23 mined under subsection (c)(1) of section 223 and
24 meets any of the following requirements:

1 “(A) AWARDED OR APPEALING DENIAL OF
2 DISABILITY BENEFITS.—The claimant has been
3 awarded disability insurance benefits or is ap-
4 pealing a denial of such benefits under sub-
5 section (a) of such section.

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

8 “(C) 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 (m):

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, between a workers’
20 compensation claimant and one or more work-
21 ers’ compensation payers which is intended—

22 “(i) to foreclose the possibility of fu-
23 ture payment of some or all workers’ com-
24 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 “(m) 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, upon a workers' com-
6 pensation claimant or workers' compensa-
7 tion payer who is a party to such agree-
8 ment.

9 “(ii) RULE OF CONSTRUCTION.—

10 Nothing in this section shall be construed
11 as requiring the submission of a Medicare
12 set-aside to the Secretary.

13 “(B) MEDICARE SET-ASIDE AND MEDI-
14 CARE SET-ASIDE AMOUNT DEFINED.—For pur-
15 poses of this subsection:

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

1 compensation claimant under the agree-
2 ment received or is likely to receive under
3 the applicable workers' compensation law
4 and for which payment would be made
5 under this title, but for subsection
6 (b)(2)(A).

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

12 “(2) QUALIFIED MEDICARE SET-ASIDE.—

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

22 “(i) The illness or injury giving rise to
23 the workers' compensation claim involved.

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

1 “(iii) The reasonableness of and ne-
2 cessity for future medical expenses for
3 treatment of the illness or injury involved.

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

7 “(B) ITEMS AND SERVICES INCLUDED.—

8 The Medicare set-aside—

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

16 “(ii) is not required to provide for
17 payment for items and services that are
18 not described in clause (i).

19 “(C) PAYMENT REQUIREMENTS.—

20 “(i) REQUIRED USE OF WORKERS’
21 COMPENSATION FEE SCHEDULE.—

22 “(I) IN GENERAL.—Except in the
23 cases of a deep discount compromise
24 agreement defined in clause (iii)(II), a
25 Medicare set-aside deemed a qualified

1 Medicare set-aside under paragraph
2 (4)(A), or an optional direct payment
3 of a Medicare set-aside made under
4 paragraph (6)(A), the set-aside
5 amount shall be based upon the pay-
6 ment amount for items and services
7 under the workers' compensation fee
8 schedule (effective as of the date of
9 the agreement) applicable to the work-
10 ers' compensation law or plan in-
11 volved.

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

1 imbursement rate under such law or
2 plan).

3 “(ii) REQUIRED PAYMENT ADJUST-
4 MENT FOR CERTAIN FEES.—The Medicare
5 set-aside amount otherwise computed shall
6 be reduced by—

7 “(I) the amount of the direct
8 costs and expenses incurred in estab-
9 lishing, administering, or securing ap-
10 proval for the Medicare set-aside; and

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

18 “(iii) OPTIONAL ADJUSTMENT FOR
19 DEEP DISCOUNT COMPROMISE AGREE-
20 MENTS.—

21 “(I) IN GENERAL.—Notwith-
22 standing clause (i), in the case of a
23 deep discount compromise agreement,
24 a workers’ compensation claimant or
25 workers’ compensation payer who is

1 party to the agreement may elect (but
2 is not required) to calculate the Medi-
3 care set-aside amount of the agree-
4 ment by applying the denied or con-
5 tested percentage described in sub-
6 clause (II) to the unadjusted Medicare
7 set-aside amount for the denied or
8 contested portion of the claim other-
9 wise calculated before the application
10 of clause (ii). 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) DEEP DISCOUNT COM-
15 PROMISE AGREEMENT.—For purposes
16 of this subsection, the term ‘deep dis-
17 count compromise agreement’ means
18 a compromise agreement in which the
19 present value of the amount included
20 in the agreement for the portion of
21 the worker’s compensation claim in-
22 volved that was denied or contested by
23 the workers’ compensation payer in-
24 volved is a percentage of more than
25 20 percent, and less than 90 percent,

1 of the amount that could be the
2 present value of the denied or con-
3 tested portion of the claim if the
4 agreement provided for the total
5 amount that could have been payable
6 under the applicable workers' com-
7 pensation law or plan involved had the
8 denied or contested portion of the
9 claim not been subject to a com-
10 promise agreement.

11 “(III) APPLICATION.—If the
12 workers' compensation claimant or
13 worker's compensation payer elects to
14 calculate the Medicare set-aside
15 amount under this clause, the Medi-
16 care set-aside shall be deemed a quali-
17 fied Medicare set-aside under para-
18 graph (4)(A) if the amount of the set-
19 aside after such calculation satisfies
20 the requirement of such paragraph.

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.

15 “(B) SAFE HARBOR AMOUNT DEFINED.—
16 For purposes of this paragraph, the term ‘safe
17 harbor amount’ means, for a workers’ com-
18 pensation settlement agreement, the greater
19 of—

20 “(i) the amount that is 10 percent of
21 the present value of the agreement (as de-
22 termined under subsection (l)(3)); or

23 “(ii) the amount that is 15 percent of
24 the payments provided by the agreement
25 for medical expenses, including payments

1 for both items and services that are cov-
2 ered under this title and that are not cov-
3 ered under this title.

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

16 “(5) APPEALS.—

17 “(A) IN GENERAL.—A party to a workers’
18 compensation settlement agreement that is dis-
19 satisfied with a determination under paragraph
20 (3)(B), upon filing a request for reconsideration
21 with the Secretary not later than 60 days after
22 the date of notice of such determination, shall
23 be entitled to—

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

4 “(ii) a hearing before an administra-
5 tive judge thereon; and

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

8 “(B) DEADLINES FOR DECISIONS.—

9 “(i) RECONSIDERATIONS.—

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

19 “(II) APPEALS OF RECONSIDER-
20 ATIONS.—If a party to the workers’
21 compensation settlement involved is
22 dissatisfied with the Secretary’s deci-
23 sion under subclause (I), that party
24 may file an appeal within the 30-day
25 period after the date of receipt of the

1 notice of the decision under such sub-
2 clause and request a hearing before
3 an administrative law judge.

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

16 “(ii) HEARINGS.—

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

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

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

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

21 “(A) OPTIONAL DIRECT PAYMENT OF
22 MEDICARE SET-ASIDE AMOUNT.—

23 “(i) ELECTION FOR DIRECT PAYMENT
24 OF MEDICARE SET-ASIDE.—With respect to
25 a claim for which a workers’ compensation

1 settlement agreement is established, a
2 workers' compensation claimant or work-
3 ers' compensation payer who is party to
4 the agreement may elect, but is not re-
5 quired, to transfer to the Secretary a di-
6 rect payment of the qualified Medicare set-
7 aside or an annuity purchased to directly
8 fund the set-aside amount. With respect to
9 a qualified Medicare set-aside paid directly
10 to the Secretary, the parties involved may
11 calculate the Medicare set-aside amount of
12 such set-aside using any of the following
13 methods:

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

19 “(II) In the case of any Medicare
20 set-aside of a deep discount com-
21 promise agreement under paragraph
22 (2)(C)(iii), the amount calculated in
23 accordance with such paragraph.

24 “(III) In the case of any Medi-
25 care set-aside, the amount based upon

1 the payment amount for items and
2 services under the workers' compensa-
3 tion fee schedule (effective as of the
4 date of the agreement) applicable to
5 the workers' compensation law or plan
6 involved, in accordance with para-
7 graph (2)(C)(i)(I).

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

13 Such transfer shall be in accordance with
14 a procedure established by the Secretary
15 and shall be made only upon written con-
16 sent of the other party to the agreement.

17 “(ii) ELECTION SATISFYING LIABIL-
18 ITY.—An election made under clause (i),
19 with respect to a qualified Medicare set-
20 aside shall satisfy any payment, in relation
21 to the underlying claim of the related
22 workers' compensation settlement agree-
23 ment, required under subsection (b)(2) to
24 be made by the claimant or payer to the
25 Secretary. The Secretary shall have no fur-

1 ther recourse, directly or indirectly, upon a
2 workers' compensation claimant or work-
3 ers' compensation payer to the agreement.

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

8 “(i) IN GENERAL.—Not later than 60
9 days after the date on which the Secretary
10 receives a request from a workers' com-
11 pensation claimant or workers' compensa-
12 tion payer for documentation of any condi-
13 tional payment made under subsection
14 (b)(2)(B)(i) on behalf of the claimant, the
15 Secretary shall provide to the claimant or
16 payer such documentation. Such docu-
17 mentation shall be sufficient for the claim-
18 ant or payer to make a reasonable deter-
19 mination whether such a payment was for
20 an item or service furnished in connection
21 with the claimant's work related injury or
22 illness involved. The claimant or payer may
23 rely on the documentation provided under
24 this clause in making such determination.
25 Payment of the amount of the conditional

1 payment, after deducting from such
2 amount any procurement costs involved
3 and any costs for unrelated and inappro-
4 priate items or services, shall discharge
5 further liability with respect to the condi-
6 tional payment.

7 “(ii) LIABILITY FOR REIMBURSE-
8 MENTS RELATED TO REQUESTED INFOR-
9 MATION.—If the Secretary fails to provide
10 information in accordance with clause (i),
11 then neither the claimant or the payer de-
12 scribed in such clause shall be liable for
13 any reimbursement under subsection
14 (b)(2)(B) with respect to the conditional
15 payment for which information was re-
16 quested under such clause.

17 “(C) PROTECTION FROM CERTAIN LIABIL-
18 ITY.—

19 “(i) LIABILITY FOR MEDICARE SET-
20 ASIDE PAYMENT GREATER THAN PAYMENT
21 UNDER WORKERS’ COMPENSATION LAW.—
22 No workers’ compensation claimant, work-
23 ers’ compensation payer, employer, admin-
24 istrator of the Medicare set-aside, legal
25 representative of the claimant, payer, em-

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

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

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

19 “(D) AUTHORITY TO MODIFY OR TERMI-
20 NATE QUALIFIED MEDICARE SET-ASIDES.—

21 “(i) IN CASE OF DEATH OF CLAIM-
22 ANT.—At any time after the death of a
23 workers’ compensation claimant, an indi-
24 vidual entitled (after such death) to dis-
25 bursement of the funds remaining in the

1 Medicare set-aside involved in the workers'
2 compensation claim of the claimant may
3 submit to the Secretary a request to termi-
4 nate the Medicare set-aside upon a show-
5 ing of the death and payment of all claims
6 that are subject to this subsection.

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

23 “(iii) NOTICE REQUIRED.—The Sec-
24 retary may not approve a request sub-
25 mitted under clause (i) or (ii) to modify or

1 terminate a Medicare set-aside unless the
2 workers' compensation claimant involved or
3 the individual entitled to disbursement (as
4 described in clause (i)) includes with such
5 request the following:

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

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

19 “(III) A copy of such notice.

20 “(iv) PROCESS FOR APPROVAL OF AP-
21 PPLICATIONS TO MODIFY OR TERMINATE
22 QUALIFIED MEDICARE SET-ASIDES IN THE
23 CASE OF MEDICAL IMPROVEMENT OR
24 CHANGE OF CIRCUMSTANCES.—Subpara-
25 graphs (B) and (C) of paragraph (3) shall

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

16 “(v) EFFECTIVE DATES FOR MODI-
17 FICATIONS AND TERMINATIONS.—

18 “(I) FOR DEATH OF CLAIM-
19 ANT.—In the case of a termination re-
20 quest under clause (i) that is ap-
21 proved, the termination shall take ef-
22 fect on the latter of the date on which
23 the showing described in such clause
24 has been provided to the Secretary, or
25 the date that is 60 days after the date

1 on which the individual entitled to dis-
2 bursement of the funds remaining in
3 the Medicare set-aside involved sends
4 the notice under clause (iii) to the
5 party designated for receipt of such
6 notice.

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

21 “(vi) TREATMENT OF REMAINING
22 MEDICARE SET-ASIDE FUNDS.—Upon ter-
23 mination or modification under this para-
24 graph, any funds released from the set-
25 aside shall revert pursuant to the terms of

1 the settlement agreement, or if there is no
2 reversionary clause, then such remaining
3 funds shall be disbursed pursuant to the
4 applicable State law.

5 “(7) TREATMENT OF STATE WORKERS’ COM-
6 PENSATION LAW.—For purposes of this subsection
7 and subsection (1), if a workers’ compensation settle-
8 ment agreement is accepted, reviewed, approved, or
9 otherwise finalized in accordance with the workers’
10 compensation law of the jurisdiction in which such
11 agreement will be effective, such acceptance, review,
12 approval, or other finalization shall be deemed con-
13 clusive as to any and all matters within the jurisdic-
14 tion of the workers’ compensation law, including the
15 determination of the total amount that could have
16 been payable for a claim which is the subject of a
17 compromise agreement in accordance with para-
18 graph (2)(C)(iii). A determination made by applica-
19 ble authority for a jurisdiction that a workers’ com-
20 pensation settlement agreement is in accordance
21 with the workers’ compensation law of the jurisdic-
22 tion shall not be subject to review by the Sec-
23 retary.”.

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

4 (1) in paragraph (2)(B)(ii), by striking “A pri-
5 mary plan” and inserting “Subject to subsections (l)
6 and (m), a primary plan”;

7 (2) in paragraph (2)(B)(iii)—

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

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

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

19 (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF
20 MEDICARE SECONDARY PAYER PROVISIONS.—Paragraph
21 (2)(A) of such section is amended by striking “workmen’s
22 compensation law or plan” and inserting “workers’ com-
23 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 shall authorize the Sec-
7 retary of Health and Human Services to impose liability
8 that is additional to the liability in effect on the date of
9 the enactment of this Act on the parties to a workers' com-
10 pensation agreement the effective date of which is before
11 such date of enactment, except in the case of fraud.

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

19 **SEC. 4. EFFECTIVE DATE.**

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

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