

111TH CONGRESS
2^D SESSION

H. R. 4796

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 9, 2010

Mr. PATRICK J. MURPHY of Pennsylvania (for himself and Mr. TIM MURPHY of Pennsylvania) 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.

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 Enhancement Act of 2010”.

1 **SEC. 2. CALCULATION AND DIRECT PAYMENT OF MSP**
2 **CLAIMS.**

3 (a) CALCULATION AND DIRECT REIMBURSEMENT OF
4 CONDITIONAL PAYMENT FOR SETTLEMENT PURPOSES.—

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

8 “(vii)(I) VOLUNTARY CALCULATION
9 AND PAYMENT OF CONDITIONAL PAY-
10 MENT.—In the case of a settlement, judg-
11 ment, award, or other payment between a
12 claimant and an applicable plan (as de-
13 fined in paragraph (8)(F)) involving a pay-
14 ment made by the Secretary pursuant to
15 clause (i) for items and services provided
16 to the claimant, for purposes of deter-
17 mining the amount of reimbursement re-
18 quired under clause (ii) to the appropriate
19 Trust Fund during the 90-day period pre-
20 ceding the reasonably expected date of
21 such settlement, judgment, award, or other
22 payment, the claimant and plan may—

23 “(aa) in good faith calculate the
24 amount of such reimbursement re-
25 quired based upon available billing

1 data for such items and services pro-
2 vided; and

3 “(bb) reimburse such amount to
4 the appropriate Trust Fund, in ac-
5 cordance with regulations promul-
6 gated by the Secretary.

7 With respect to a payment made
8 under clause (i) for items and services
9 provided to a claimant and subject to
10 subclause (II), any reimbursement
11 made in accordance with this sub-
12 clause shall satisfy any obligation of
13 the claimant and the applicable plan
14 under this subsection.

15 “(II) SECRETARY’S ABILITY TO CON-
16 TEST AMOUNT OF PAYMENT.—In the case
17 of a reimbursement made to the appro-
18 priate Trust Fund under subclause (I),
19 during the 75-day period beginning on the
20 date of such reimbursement, if the Sec-
21 retary determines such reimbursement
22 made is not the total amount owed under
23 this subparagraph the Secretary shall have
24 the right to contest the amount of such re-
25 imbursement made and to serve upon the

1 claimant and applicable plan a final de-
2 mand for the balance of the remaining
3 amount so owed. The claimant or applica-
4 ble plan may make a reimbursement to the
5 appropriate Trust Fund in the amount of
6 such balance determined by the Secretary
7 or may pursue appeal of the amount of the
8 reimbursement determined by the Sec-
9 retary pursuant to the appeals process
10 under clause (ix). In any such appeal, the
11 burden of proof shall be on the claimant or
12 applicable plan to demonstrate that the re-
13 imbursement made to the appropriate
14 Trust fund under subclause (I) was cor-
15 rect.

16 “(viii)(I) REQUEST FOR FINAL DE-
17 MAND FOR REIMBURSEMENT.—In the case
18 of a settlement, judgment, award, or other
19 payment between a claimant and an appli-
20 cable plan (as defined in paragraph
21 (8)(F)) involving a payment made by the
22 Secretary pursuant to clause (i) for items
23 and services provided to the claimant, the
24 claimant or applicable plan may at any
25 time beginning 120 days prior to the rea-

1 sonably expected date of such settlement,
2 judgment, award, or other payment, sub-
3 mit to the Secretary, in accordance with
4 regulations to be promulgated by the Sec-
5 retary, a request for a recovery demand
6 letter for reimbursement required under
7 clause (ii) of such payment. The Secretary
8 shall have 60 days to respond to such re-
9 quest with such final demand. Not later
10 than 60 days after the date of receipt of
11 such final demand, the claimant or applica-
12 ble plan may reimburse the appropriate
13 Trust Fund for such payment in the
14 amount identified in such final demand, in
15 accordance with regulations promulgated
16 by the Secretary. With respect to a pay-
17 ment made under clause (i) for items and
18 services provided to a claimant, any such
19 reimbursement made in accordance with
20 this subclause shall satisfy any obligations
21 of the claimant and the applicable plan
22 under this subsection.

23 “(II) FAILURE OF THE SECRETARY
24 TO PROVIDE FINAL DEMAND FOR CONDI-
25 TIONAL PAYMENT.—In the case that the

1 Secretary fails to provide a final demand
2 for any item or service subject to reim-
3 bursement required under clause (ii) in ac-
4 cordance with subclause (I), the claimant,
5 applicable plan, or an entity that receives
6 payment from an applicable plan shall not
7 be liable for and shall not be obligated to
8 make payment subject to this subsection
9 for any item or service related to the re-
10 quest for final demand for reimbursement.

11 “(ix) RIGHT OF APPEAL.—The Secretary
12 shall promulgate regulations establishing a
13 right of appeal and appeals process, with re-
14 spect to any requirement under clause (ii) for
15 a payment made under this title for an item or
16 service under a primary plan, under which the
17 applicable plan involved, or an attorney, agent,
18 or third party administrator on behalf of such
19 applicable plan may appeal such requirement.
20 Such right of review shall—

21 “(I) include review through an admin-
22 istrative law judge and administrative re-
23 view board, and access to judicial review in
24 the district court of the United States for
25 the judicial district in which the appellant

1 is located (or, in the case of an action
2 brought jointly by more than one appli-
3 cant, the judicial district in which the
4 greatest number of applicants are located)
5 or in the District Court for the District of
6 Columbia; and

7 “(II) be carried out in a manner simi-
8 lar to the appeals procedure used for pur-
9 poses of subsection (a).”.

10 (2) CONFORMING AMENDMENT.—Clause (ii) of
11 such section is amended by inserting after “60-day”
12 the following “(or in the case of an applicable plan
13 and reimbursement described in clause (vii) or (viii),
14 90-day)”.

15 **SEC. 3. THRESHOLD.**

16 (a) IN GENERAL.—Section 1862(b)(2)(B)(ii) of the
17 Social Security Act (42 U.S.C. 1395y(b)(2)(B)(ii)) is
18 amended—

19 (1) by striking “(ii) REPAYMENT REQUIRED.—
20 A primary plan” and inserting the following:

21 “(ii) REPAYMENT REQUIRED.—

22 “(I) IN GENERAL.—A primary
23 plan”; and

24 (2) by adding at the end the following new sub-
25 clause:

1 “(II) EXCEPTION.—Subclause (I)
2 shall not apply with respect to the fol-
3 lowing payments under this title:

4 “(aa) Any settlement, judg-
5 ment, award, or other payment
6 by an applicable plan constituting
7 a total payment obligation to a
8 claimant of not more than
9 \$5,000.

10 “(bb) Any settlement, judg-
11 ment, award, or other payment
12 by an applicable plan involving
13 the ongoing responsibility for
14 medical payments not otherwise
15 addressed in subclause (I), of not
16 more than \$5,000. For purposes
17 of this subclause and with re-
18 spect to a settlement, judgment,
19 award, or other payment pay-
20 ments not otherwise addressed in
21 subclause (I) involving the ongo-
22 ing responsibility for medical
23 payments, such payment shall in-
24 clude only the cumulative value
25 of the medical payments made

1 and the purchase price of any an-
2 nuity or similar instrument.

3 The amounts under this subclause
4 shall be adjusted each year based on
5 the percentage increase in the Con-
6 sumer Price Index (rounded to the
7 nearest multiple of \$100) for the year
8 involved.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall apply with respect to payments made
11 on or after 3 months after the date of the enactment of
12 this Act.

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

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

16 (1) in the first sentence of subparagraph (E)(i),
17 by striking “shall be subject” and all that follows
18 through the end of the sentence and inserting the
19 following: “may be subject to a civil money penalty
20 of up to \$1,000 for each day of noncompliance. The
21 severity of each such penalty shall be based on the
22 intentional nature of the violation.”; and

23 (2) by adding at the end the following new sub-
24 paragraph:

1 “(I) SAFE HARBORS.—Not later than 60
2 days after the date of the enactment of this
3 subparagraph, the Secretary shall publish a no-
4 tice in the Federal Register soliciting proposals,
5 which will be accepted during a 60-day period,
6 for the creation of safe harbors from sanctions
7 imposed under subparagraph (E) under which
8 entities responsible for reporting information
9 under this paragraph will be deemed to have
10 complied with the reporting requirements under
11 this paragraph and will not be subject to such
12 sanctions. After considering the proposals sub-
13 mitted pursuant to the preceding sentence, the
14 Secretary, in consultation with the Attorney
15 General, shall publish in the Federal Register,
16 including a 60-day period for comment, pro-
17 posed safe harbors. After considering any public
18 comments received during such period, the Sec-
19 retary shall issue final rules establishing safe
20 harbors from penalties or other sanctions under
21 subparagraph (E).”.

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

24 Section 1862(b)(8)(B) of the Social Security Act (42
25 U.S.C. 1395y(b)(8)(B)) is amended by adding at the end

1 (after and below clause (ii)) the following sentence: “Not
2 later than one year after the date of enactment of the
3 Medicare Secondary Payer Enhancement Act of 2010, the
4 Secretary shall modify the reporting requirements under
5 this paragraph so that entities responsible for reporting
6 information under this paragraph are not required to ac-
7 cess or report to the Secretary beneficiary social security
8 numbers or health identification claim numbers.”.

9 **SEC. 6. STATUTE OF LIMITATIONS.**

10 (a) IN GENERAL.—Section 1862(b)(2)(B)(iii) of the
11 Social Security Act (42 U.S.C. 1395y(b)(2)(B)(iii)) is
12 amended by adding at the end the following sentence:
13 “Every action brought by the United States or an officer
14 or agency thereof under this clause shall be barred unless
15 the complaint is filed not later than three years after the
16 date of the receipt of notice of a settlement or other pay-
17 ment giving rise to recovery of a payment made pursuant
18 to paragraph (8).”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply with respect to actions brought
21 on or after 6 months after the date of the enactment of
22 this Act.

1 **SEC. 7. USER FEE.**

2 Section 1862(b) of the Social Security Act (42 U.S.C.
3 1395y(b)) is amended by adding the following new para-
4 graph:

5 “(9) USER FEES.—

6 “(A) IN GENERAL.—Beginning 90 days
7 after the date of the enactment of the Medicare
8 Secondary Payer Enhancement Act of 2010,
9 and annually thereafter for the 10-year period
10 beginning on such date of enactment, the Sec-
11 retary shall assess and collect fees in accord-
12 ance with this paragraph as follows:

13 “(i) DIRECT CONDITIONAL PAYMENT
14 REIMBURSEMENT FEE.—Each person or
15 entity that submits a payment to fulfill the
16 reimbursement requirement pursuant to
17 paragraph (2)(B)(vii) shall be subject to a
18 fee of \$30 for each payment reimbursed to
19 the Secretary.

20 “(ii) REQUEST FOR FINAL DEMAND
21 OF CONDITIONAL PAYMENT FEE.—Each
22 person that submits a request for a recover
23 demand letter of conditional payment
24 under paragraph (2)(B)(viii) shall be sub-
25 ject to a fee of \$30 for each such request
26 submitted to the Secretary. In the case of

1 a person or entity that pays a fee under
2 this clause, such person or entity shall not
3 also be subject to the fee under clause (i).

4 “(B) INFLATION ADJUSTMENT.—For fiscal
5 year 2010 and subsequent fiscal years, the
6 amount of the fees specified in subparagraph
7 (A) shall be adjusted by the Secretary by no-
8 tice, published in the Federal Register, to re-
9 flect any percent changes in the Consumer
10 Price Index for all urban consumers (all items;
11 U.S. city average) for the 12 month period end-
12 ing June 30 of the preceding fiscal year.

13 “(C) COLLECTION OF UNPAID FEES.—In
14 any case where the Secretary does not receive
15 payment of a fee assessed under subparagraph
16 (A) by the date that is 30 days after the date
17 such fee is due, such fee shall be treated as a
18 claim of the United States Government subject
19 to subchapter II of chapter 37 of title 31,
20 United States Code.”.

○