

CURRENT MEDICARE SECONDARY PAYER LEGISLATIVE ACTIVITY

Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act of 2015, H.R.2649 and S.1514

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Diverse groups in the workers' compensation community have been working together now for more than a decade to address legislatively the policies of the Centers for Medicare and Medicaid Services ("CMS") impacting future medical obligations after settlement of a workers' compensation claim. There presently are signs of significant progress in enacting the Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act.

The major proponents of this bipartisan legislation include the American Bar Association, the American Insurance Association and Property Casualty Insurers Association of America, representing the insurance industry, the Workers Injury Law & Advocacy Group (WILG), representing advocates for injured employees, and the National Council of Self Insurers. The current legislation is supported by the North Carolina Chamber and earlier versions have been supported by the North Carolina Bar Association and North Carolina Advocates for Justice.

Identical legislation has been introduced in the United States House of Representatives, H.R. 2649, and United States Senate, S.1514. The principal sponsors in the House are Republican Representative Dave Reichert of Washington and Democratic Representative Mike Thompson of California. In the Senate, the principal sponsors are Republican Senator Rob Portman of Ohio and Democratic Senator Bill Nelson of Florida. The legislation is assigned in the House to the Ways and Means Committee and in the Senate to the Finance Committee. Dialogue between the committee staffs and with CMS and the legislative sponsors is continuing and some modifications in the legislative language are anticipated.

This legislation is constructed in the context of existing CMS policies for the application of the Medicare Secondary Payer law to future medical expenses after workers' compensation settlements. The use of a Medicare Set-Aside ("MSA") under workers' compensation settlement agreements would continue to be optional as a mechanism to satisfy a party's obligations under the Medicare Secondary Payer Act.

Important present provisions in this legislation include the following.

\$25,000 and Other Exemptions From MSP Obligations.

Workers' compensation settlements of \$25,000 or less would no longer be subject to the MSP Act. Medicare's interests thus would not have to be taken into account when the settlement does not exceed \$25,000. (Att., p. 2-3) Also, Medicare would be considered primary and its interests would not need to be taken into account in other circumstances which do not require the use of an MSA under CMS's present policies. Accordingly, it would be unnecessary to take Medicare's interests into account when the settlement does not extinguish the employer's obligation to pay future medical expenses or when the injured employee is not eligible under the state law for payment of medical expenses incurred after the date of the settlement. And finally, Medicare's interests would not be taken into account when the injured employee is unlikely to become Medicare-eligible within 30 months of the settlement. Thus injured employees who have not attained an age of 62 years and six months or who have not applied for social security disability or have been denied social security disability and have not appealed would not be required to take Medicare's interests into account. (Att., p. 3-5)

Qualified Medicare Set-Aside.

A qualified MSA would satisfy all obligations under the MSP Act with respect to future medical expense payments. The MSP is calculated (1) using the fees set by the workers' compensation fee schedule or application of the state workers' compensation law, and (2) for medical services otherwise payable by Medicare covered by the state workers' compensation law. (Att., p. 9-14)

Proportional Qualified MSA.

The parties could agree to opt to make a proportional reduction in the MSA by the percentage by which the value of the workers' compensation claim has been compromised because of denied or contested portions of the claim. The percentage reduction would be equal to the denied, disputed, or contested percentage of the total settlement. (Att., p. 14-15)

Expedited Approval and Appeal Process.

A party has the option of submitting the MSA amount for approval by CMS as a qualified MSA. CMS is to notify the parties of its decision to approve or disapprove the amount within 60 days. If disapproved, CMS is required to include specific reasons for the disapproval. If an MSA is not approved or disapproved within 60 days of submission, a party may appeal directly to an administrative law judge. An expedited appeal procedure is established for administrative and judicial review of the CMS decision. (Att., p. 15-19)

Optional Direct Payment of the MSA to CMS.

The parties to a workers' compensation settlement could elect by agreement to transfer an MSA directly to CMS rather than administer the MSA. Thereafter, the medical expenses related to the injury would be paid by Medicare in the same manner as Medicare pays the injured employees' unrelated medical expenses. The parties electing to transfer the MSA directly to CMS would have the option to calculate the MSA using the Medicare reimbursement rate for services in lieu of the applicable workers' compensation fee schedule rate. (Att., p. 19-21)

Balance Billing Prohibited.

Medical providers providing services payable from an MSA would be prohibited from seeking payment greater than the payment permitted by the applicable workers' compensation fee schedule (Att., p. 21-23)

Conclusive Effect of State Workers' Compensation Law.

A state agency decision on reviewing a workers' compensation settlement agreement would be conclusive on matters within the jurisdiction of the state workers' compensation law. These would include allocations of settlement funds, projections of future disability or medical benefits, and the total amount that could have been payable for a claim for the purpose of calculating a proportional MSA. (Att., p. 24)

There is considerable current legislative activity focused on the treatment under the Medicare Secondary Payer Act of future medical expenses at the time of a workers' compensation settlement. Stay tuned. There is more to come.

Attachment:

Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act of 2015

114TH CONGRESS
1ST SESSION

H. R. 2649

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.

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 2015”.

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) THRESHOLD FOR 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 (p),” after “(ii)”; and

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

14 “(p) THRESHOLD FOR 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 as a primary plan
 19 for purposes of subsection (b) with respect to a
 20 workers' compensation settlement agreement if the
 21 agreement (or claimant under the agreement) meets
 22 any of the following requirements:

23 “(A) TOTAL SETTLEMENT AMOUNT NOT
 24 EXCEEDING \$25,000.—Such agreement has a
 25 total settlement amount (as determined under
 26 paragraph (2)) that does not exceed \$25,000 or

1 such greater amount as the Secretary may
2 specify in regulations.

3 “(B) LIKELY INELIGIBILITY OF WORKERS’
4 COMPENSATION CLAIMANT FOR MEDICARE BEN-
5 EFITS.—The claimant subject to such agree-
6 ment—

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

10 “(ii) is unlikely to become so eligible,
11 as determined under paragraph (3), within
12 30 months after such effective date.

13 “(C) NO FUTURE WORKERS’ COMPENSA-
14 TION MEDICAL EXPENSES.—The claimant sub-
15 ject to such agreement is not eligible for pay-
16 ment of medical expenses incurred after the ef-
17 fective date of the agreement from the workers’
18 compensation law or plan of the jurisdiction in
19 which such agreement will be effective.

20 “(D) NO LIMITATION ON FUTURE WORK-
21 ERS’ COMPENSATION MEDICAL EXPENSES.—
22 Such agreement does not limit or extinguish the
23 right of the claimant to payment of medical ex-
24 penses incurred after the effective date of such
25 agreement by the workers’ compensation law or

1 plan of the jurisdiction in which the agreement
2 will be effective.

3 “(2) DETERMINATION OF TOTAL SETTLEMENT
4 AMOUNT OF WORKERS’ COMPENSATION SETTLE-
5 MENT AGREEMENT.—For purposes of paragraph
6 (1)(A) and subsection (q) and with respect to a
7 work-related injury or illness that is the subject of
8 a workers’ compensation settlement agreement, the
9 total settlement amount of the agreement is the sum
10 of monetary wage replacement benefits, attorney
11 fees, all future medical expenses, repayment of Medi-
12 care conditional payments, payout totals for annu-
13 ities to fund the expenses listed above, and any pre-
14 viously settled portion of the workers’ compensation
15 claim.

16 “(3) DETERMINATION OF LIKELY INELIGI-
17 BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—
18 For purposes of paragraph (1)(B)(ii), a workers’
19 compensation claimant shall be deemed unlikely to
20 become eligible for benefits under this title within 30
21 months after the effective date of the agreement un-
22 less, as of the effective date of the agreement, such
23 claimant is insured for disability insurance benefits
24 under section 223(c)(1) and is described in any of
25 the following subparagraphs:

1 “(A) AWARDED DISABILITY BENEFITS.—
2 The individual has been awarded such disability
3 insurance benefits.

4 “(B) APPLIED FOR DISABILITY.—The indi-
5 vidual has applied for such disability insurance
6 benefits.

7 “(C) ANTICIPATES APPEAL.—The indi-
8 vidual has been denied such disability insurance
9 benefits but anticipates appealing that decision.

10 “(D) APPEALING OR REFILING.—The indi-
11 vidual is in the process of appealing or refiling
12 for such disability insurance benefits.

13 “(E) MINIMUM AGE.—The individual is at
14 least 62 years and 6 months of age.

15 “(F) END-STAGE RENAL DISEASE.—The
16 individual is medically determined to have end-
17 stage renal disease but does not yet qualify for
18 health benefits under section 226A based on
19 such disease.

20 “(4) DEFINITIONS.—For purposes of this sub-
21 section and subsection (q):

22 “(A) COMPROMISE AGREEMENT.—The
23 term ‘compromise agreement’ means a workers’
24 compensation settlement agreement that—

1 “(i) applies to a workers’ compensa-
2 tion claim that is denied or contested, in
3 whole or in part, by a workers’ compensa-
4 tion payer involved under the workers’
5 compensation law or plan applicable to the
6 jurisdiction in which the agreement has
7 been settled; and

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

12 “(B) COMMUTATION AGREEMENT.—The
13 term ‘commutation agreement’ means a work-
14 ers’ compensation settlement agreement to set-
15 tle all or a portion of a workers’ compensation
16 claim, in which—

17 “(i) liability for past and future bene-
18 fits is not disputed; and

19 “(ii) the parties to the agreement
20 agree to include payment for future work-
21 ers’ compensation benefits payable after
22 the date on which the agreement becomes
23 effective.

1 “(C) WORKERS’ COMPENSATION CLAIM-
2 ANT.—The term ‘workers’ compensation claim-
3 ant’ means a worker who—

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

6 “(ii) submits a claim or accepts bene-
7 fits under such law or plan for a work-re-
8 lated injury or illness.

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

11 “(i) IN GENERAL.—The term ‘work-
12 ers’ compensation law or plan’ means a
13 law or program administered by a State or
14 the United States to provide compensation
15 to workers for a work-related injury or ill-
16 ness (or for disability or death caused by
17 such an injury or illness), including the
18 Longshore and Harbor Workers’ Com-
19 pensation Act (33 U.S.C. 901–944, 948–
20 950), chapter 81 of title 5, United States
21 Code (known as the Federal Employees
22 Compensation Act), the Black Lung Bene-
23 fits Act (30 U.S.C. 931 et seq.), and part
24 C of title 4 of the Federal Coal Mine and
25 Safety Act (30 U.S.C. 901 et seq.), but not

1 including the Act of April 22, 1908 (45
2 U.S.C. 51 et seq.) (popularly referred to as
3 the Federal Employer’s Liability Act).

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

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

20 “(F) WORKERS’ COMPENSATION SETTLE-
21 MENT AGREEMENT.—The term ‘workers’ com-
22 pensation settlement agreement’ means an
23 agreement, which includes a commutation
24 agreement or compromise agreement, or any
25 combination of both, between a claimant and

1 one or more workers' compensation payers
2 which—

3 “(i) forecloses the possibility of future
4 payment of some or all workers' compensa-
5 tion benefits involved; and

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

10 “(II) eliminates cause for litigation in-
11 volving issues in dispute between the
12 claimant and payer.”.

13 (b) SATISFACTION OF SECONDARY PAYER REQUIRE-
14 MENTS THROUGH USE OF QUALIFIED MEDICARE SET-
15 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT
16 AGREEMENTS.—Section 1862 of the Social Security Act
17 (42 U.S.C. 1395y), as amended by subsection (a), is fur-
18 ther amended by adding at the end the following new sub-
19 section:

20 “(q) TREATMENT OF QUALIFIED MEDICARE SET-
21 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT
22 AGREEMENTS.—

23 “(1) SATISFACTION OF SECONDARY PAYER RE-
24 QUIREMENTS THROUGH USE OF QUALIFIED MEDI-
25 CARE SET-ASIDES.—

1 “(A) FULL SATISFACTION OF CLAIM OBLI-
2 GATIONS.—

3 “(i) IN GENERAL.—If a workers’ com-
4 pensation settlement agreement, related to
5 a claim of a workers’ compensation claim-
6 ant, includes a qualified Medicare set-aside
7 (as defined in paragraph (2)), such set-
8 aside shall satisfy any obligation with re-
9 spect to the future payment reimbursement
10 under subsection (b)(2) with respect to
11 such claim.

12 “(ii) RULE OF CONSTRUCTION.—
13 Nothing in this section shall be construed
14 as requiring the submission of a Medicare
15 set-aside to the Secretary.

16 “(B) MEDICARE SET-ASIDE AND MEDI-
17 CARE SET-ASIDE AMOUNT DEFINED.—For pur-
18 poses of this subsection:

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

1 amount that is in full satisfaction of the
2 obligation described in subparagraph (A)
3 for items and services that the workers'
4 compensation claimant under the agree-
5 ment received or is likely to receive under
6 the applicable workers' compensation law
7 and for which payment would be made
8 under this title, but for subsection
9 (b)(2)(A).

10 “(ii) MEDICARE SET-ASIDE
11 AMOUNT.—The term ‘Medicare set-aside
12 amount’ means, with respect to a Medicare
13 set-aside, the actual dollar amount pro-
14 vided for in clause (i).

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

16 “(A) REQUIREMENTS OF QUALIFIED MEDI-
17 CARE SET-ASIDE.—For purposes of this sub-
18 section, a Medicare set-aside shall be deemed to
19 be a qualified Medicare set-aside if the Medi-
20 care set-aside amount reasonably takes into ac-
21 count the full payment obligation described in
22 paragraph (1)(A), while meeting the require-
23 ments of subparagraphs (B) and (C) and is de-
24 termined based on the following:

1 “(i) The illness or injury giving rise to
2 the workers’ compensation claim involved.

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

5 “(iii) The reasonableness of and ne-
6 cessity for future medical expenses for
7 treatment of the illness or injury involved.

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

11 “(v) The regulations and case law rel-
12 evant to the State workers’ compensation
13 law or plan involved.

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

16 “(i) shall include payment for items
17 and services that are covered and otherwise
18 payable under this title as of the effective
19 date of the workers’ compensation settle-
20 ment agreement and that are covered by
21 the workers’ compensation law or plan;
22 and

23 “(ii) is not required to provide for
24 payment for items and services that are
25 not described in clause (i).

1 “(C) PAYMENT REQUIREMENTS.—

2 “(i) REQUIRED USE OF WORKERS’
3 COMPENSATION FEE SCHEDULE.—

4 “(I) IN GENERAL.—Except in the
5 case of an optional direct payment of
6 a Medicare set-aside made under
7 paragraph (5)(A), the set-aside
8 amount shall be based upon the pay-
9 ment amount for items and services
10 under the workers’ compensation fee
11 schedule (effective as of the date of
12 the agreement) applicable to the work-
13 ers’ compensation law or plan in-
14 volved.

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

1 jury or illness as defined under such
2 law or plan (or in the absence of such
3 a schedule, the applicable medical re-
4 imbursement rate under such law or
5 plan).

6 “(ii) OPTIONAL PROPORTIONAL AD-
7 JUSTMENT FOR COMPROMISE SETTLEMENT
8 AGREEMENTS.—

9 “(I) IN GENERAL.—In the case
10 of a compromise settlement agree-
11 ment, a claimant or workers’ com-
12 pensation payer who is party to the
13 agreement may elect to calculate the
14 Medicare set-aside amount of the
15 agreement by applying a percentage
16 reduction to the Medicare set-aside
17 amount for the total settlement
18 amount that could have been payable
19 under the applicable workers’ com-
20 pensation law or similar plan involved
21 had the denied, disputed, or contested
22 portion of the claim not been subject
23 to a compromise agreement. The per-
24 centage reduction shall be equal to the
25 denied, disputed, or contested percent-

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

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

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

14 “(A) OPTIONAL PRIOR APPROVAL BY SEC-
15 RETARY.—A party to a workers’ compensation
16 settlement agreement that includes a Medicare
17 set-aside may submit to the Secretary the Medi-
18 care set-aside amount for approval of the set-
19 aside as a qualified Medicare set-aside.

20 “(B) NOTICE OF DETERMINATION OF AP-
21 PROVAL OR DISAPPROVAL.—Not later than 60
22 days after the date on which the Secretary re-
23 ceives a submission under subparagraph (A),
24 the Secretary shall notify in writing the parties
25 to the workers’ compensation settlement agree-

1 ment of the determination of approval or dis-
2 approval. If the determination disapproves such
3 submission the Secretary shall include with
4 such notification the specific reasons for the
5 disapproval.

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

14 “(4) APPEALS.—

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

22 “(i) reconsideration of the determina-
23 tion by the Secretary (with respect to such
24 determination);

1 “(ii) a hearing before an administra-
2 tive law judge thereon after such reconsid-
3 eration; and

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

6 “(B) DEADLINES FOR DECISIONS.—

7 “(i) RECONSIDERATIONS.—

8 “(I) IN GENERAL.—The Sec-
9 retary shall conduct and conclude a
10 reconsideration of a determination
11 under subparagraph (A)(i) and mail
12 or deliver electronically the notice of
13 the decision of such reconsideration to
14 the party involved by not later than
15 the last day of the 30-day period be-
16 ginning on the date that a request for
17 such reconsideration has been timely
18 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 or
7 deliver the notice of the decision
8 under subclause (I) by the last day of
9 the period described in such sub-
10 clause, the party involved may file an
11 appeal directly to an administrative
12 law judge not later than 30 days after
13 such failure.

14 “(ii) HEARINGS.—

15 “(I) IN GENERAL.—An adminis-
16 trative law judge shall conduct and
17 conclude a hearing on a decision of
18 the Secretary or a determination with
19 respect to which the Secretary failed
20 to render a decision under paragraph
21 (3)(B) or clause (i) and render a deci-
22 sion on such hearing by not later than
23 the last day of the 90-day period be-
24 ginning on the date that a request for
25 such hearing has been 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 shall be entitled to judi-
 14 cial review of the decision under sub-
 15 paragraph (A), notwithstanding any
 16 requirements for a hearing for pur-
 17 poses of the party’s right to such judi-
 18 cial review.

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

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

24 “(i) ELECTION FOR DIRECT PAYMENT
 25 OF MEDICARE SET-ASIDE.—Effective 30

1 days after the date of enactment of this
2 subsection, with respect to a claim for
3 which a workers' compensation settlement
4 agreement is or has been established, a
5 claimant or workers' compensation payer
6 who is party to the agreement may elect,
7 but is not required, to transfer to the Sec-
8 retary a direct payment of the qualified
9 Medicare set-aside. With respect to a quali-
10 fied Medicare set-aside paid directly to the
11 Secretary, the parties involved may cal-
12 culate the Medicare set-aside amount of
13 such set-aside using any of the following
14 methods:

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

20 “(II) In the case of any Medicare
21 set-aside, the amount based upon the
22 payment amount for items and serv-
23 ices under the workers' compensation
24 fee schedule (effective as of the date
25 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.—

1 No workers' compensation claimant, work-
2 ers' compensation payer, employer, admin-
3 istrator of the Medicare set-aside, legal
4 representative of the claimant, payer, em-
5 ployer, or administrator, or any other
6 party related to the claimant, payer, em-
7 ployer, or administrator shall be liable for
8 any payment amount established under a
9 Medicare set-aside for an item or service
10 provided to the claimant that is greater
11 than the payment amount for the item or
12 service established under the workers' com-
13 pensation fee schedule (or in the absence
14 of such schedule, the medical reimburse-
15 ment rate) under the compensation law or
16 plan of the jurisdiction where the agree-
17 ment will be effective.

18 “(ii) LIABILITY FOR PROVIDER
19 CHARGES GREATER THAN PAYMENT
20 UNDER WORKERS' COMPENSATION AGREE-
21 MENT.—With respect to a workers' com-
22 pensation settlement agreement, a provider
23 may not bill (or collect any amount from)
24 the workers' compensation claimant, work-
25 ers' compensation payer, employer, admin-

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

23 “(C) ELECTION OF PROFESSIONAL OR
24 BENEFICIARY SELF ADMINISTRATION OF MEDI-
25 CARE SET-ASIDE PAYMENTS.—Nothing in this

1 subsection or subsection (p) prohibits an indi-
2 vidual from electing to utilize professional ad-
3 ministration services or to self-administer pay-
4 ments of their Medicare Set-Aside in accord-
5 ance with existing law.

6 “(6) TREATMENT OF STATE WORKERS’ COM-
7 PENSATION LAW.—For purposes of this subsection
8 and subsection (p), if a workers’ compensation set-
9 tlement agreement is accepted, reviewed, approved,
10 or otherwise finalized in accordance with the work-
11 ers’ compensation law of the jurisdiction in which
12 such agreement will be effective, such acceptance, re-
13 view, approval, or other finalization shall be deemed
14 final and conclusive as to any and all matters within
15 the jurisdiction of the workers’ compensation law,
16 including the determination of reasonableness of the
17 settlement value; any allocations of settlement funds;
18 the projection of future indemnity or medical bene-
19 fits that may be reasonably expected to be paid
20 under the State workers’ compensation law; and, in
21 the case of a compromise agreement, the total
22 amount that could have been payable for a claim
23 which is the subject of such agreement in accordance
24 with paragraph (2)(C)(ii).”.

1 (c) CONFORMING AMENDMENTS.—Subsection (b) of
2 such section is further amended—

3 (1) in paragraph (2)(B)(ii), by striking “para-
4 graph (9)” and inserting “paragraph (9) and sub-
5 sections (p) and (q)”;

6 (2) in paragraph (2)(B)(iii)—

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

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

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

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

23 (e) LIMITATION ON LIABILITY.—The parties to a
24 workers’ compensation settlement agreement which met
25 the provisions of section 1862(b) of the Social Security

1 Act (42 U.S.C. 1395y(b)) on the effective date of settle-
2 ment shall be accepted as meeting the requirements of
3 such section notwithstanding changes in law, regulations,
4 or administrative interpretation of such provisions after
5 the effective date of such settlement.

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

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