

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1063
OFFERED BY MR. MURPHY OF PENNSYLVANIA**

Strike all after the enacting clause and insert the following:

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Strengthening Medicare And Repaying Taxpayers Act of
4 2012”.

5 (b) **TABLE OF CONTENTS.**—The table of contents of
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Determination of reimbursement amount through CMS website to improve program efficiency.
- Sec. 3. Fiscal efficiency and revenue neutrality.
- Sec. 4. Reporting requirement.
- Sec. 5. Use of social security numbers and other identifying information in reporting.
- Sec. 6. Statute of limitations.

7 **SEC. 2. DETERMINATION OF REIMBURSEMENT AMOUNT**
8 **THROUGH CMS WEBSITE TO IMPROVE PRO-**
9 **GRAM EFFICIENCY.**

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

1 “(vii) USE OF WEBSITE TO DETER-
2 MINE FINAL CONDITIONAL REIMBURSE-
3 MENT AMOUNT.—

4 “(I) NOTICE TO SECRETARY OF
5 EXPECTED DATE OF A SETTLEMENT,
6 JUDGMENT, ETC.—In the case of a
7 payment made by the Secretary pur-
8 suant to clause (i) for items and serv-
9 ices provided to the claimant, the
10 claimant or applicable plan (as de-
11 fined in paragraph (8)(F)) may at
12 any time beginning 120 days before
13 the reasonably expected date of a set-
14 tlement, judgment, award, or other
15 payment, notify the Secretary that a
16 payment is reasonably expected and
17 the expected date of such payment.

18 “(II) SECRETARIAL PROVIDING
19 ACCESS TO CLAIMS INFORMATION
20 THROUGH A WEBSITE.—The Sec-
21 retary shall maintain and make avail-
22 able to individuals to whom items and
23 services are furnished under this title
24 (and to authorized family or other
25 representatives recognized under regu-

1 lations and to an applicable plan
2 which has obtained the consent of the
3 individual) access to information on
4 the claims for such items and services
5 (including payment amounts for such
6 claims), including those claims that
7 are attributable to a specific injury or
8 incident that forms the basis for a
9 settlement, judgment, award or other
10 payment relating to an injury or inci-
11 dent to which this subsection applies.
12 Such access shall be provided to an
13 individual, representative, or plan
14 through a website that requires a
15 password to gain access to the infor-
16 mation. The Secretary shall update
17 the information on claims on such
18 website in as timely a manner as pos-
19 sible but not later than 15 days after
20 the date of receipt of such claims.
21 Such information shall be maintained
22 and made available consistent with
23 the following:

24 “(aa) The information shall
25 be as complete as possible.

1 “(bb) The information accu-
2 rately identifies those claims and
3 payments that are related to an
4 injury or incident to which the
5 provisions of this subsection
6 apply.

7 “(cc) The website provides a
8 method for the receipt of secure
9 electronic communications with
10 the individual, representative, or
11 plan involved.

12 “(dd) The website provides
13 that information is transmitted
14 from the website in a form that
15 includes an official time and date
16 that the information is trans-
17 mitted.

18 “(ee) The website shall per-
19 mit the individual, representative,
20 or plan to download a statement
21 of reimbursement amounts (in
22 this clause referred to as a ‘state-
23 ment of reimbursement amount’)
24 on claims and payments under

1 this title relating to a specific in-
2 jury or incident of the individual.

3 “(III) USE OF WEB DOWNLOAD
4 AS BASIS FOR FINAL CONDITIONAL
5 AMOUNT.—If an individual (or other
6 claimant or applicable plan with the
7 consent of the individual) obtains a
8 statement of reimbursement amount
9 from the website during the protected
10 period described in subclause (IV) and
11 the related settlement, judgment,
12 award or other payment is made dur-
13 ing such period, then the last state-
14 ment of reimbursement amount
15 downloaded during such period shall
16 constitute the final conditional
17 amount subject to recovery under
18 clause (ii) related to such settlement,
19 judgment, award, or other payment..

20 “(IV) RESOLUTION OF DISCREP-
21 ANCIES.—If the individual, represent-
22 ative, or plan involved believes there is
23 a discrepancy with the statement of
24 reimbursement amount, the Secretary
25 shall provide a timely process con-

1 sistent with the expected date of set-
2 tlement, judgment, award, or other
3 payment to resolve the discrepancy.

4 “(V) PROTECTED PERIOD.—In
5 subclause (III), the term ‘protected
6 period’ means, with respect to a set-
7 tlement, judgment, award or other
8 payment relating to an injury or inci-
9 dent, the portion (if any) of the 120-
10 day period beginning on the date of
11 notice under subclause (I) with re-
12 spect to such settlement, judgment,
13 award, or other payment that is after
14 the end of the 65-day period begin-
15 ning on the date of such notice to the
16 Secretary.

17 “(VI) EFFECTIVE DATE.—The
18 Secretary shall promulgate final regu-
19 lations to carry out this clause not
20 later than 9 months after the date of
21 the enactment of this clause.

22 “(VII) WEBSITE INCLUDING SUC-
23 CESSOR TECHNOLOGY.—In this
24 clause, the term ‘website’ includes any
25 successor technology.

1 “(viii) RIGHT OF APPEAL.—The Sec-
2 retary shall promulgate regulations estab-
3 lishing a right of appeal and appeals proc-
4 ess, with respect to any determination
5 under this subsection for a payment made
6 under this title for an item or service
7 under an applicable plan for which the
8 Secretary is seeking to recover funds from
9 such plan, under which the applicable plan
10 involved, or an attorney, agent, or third
11 party administrator on behalf of such ap-
12 plicable plan, may appeal such determina-
13 tion. The individual furnished such an item
14 or service shall be notified of the plan’s in-
15 tent to appeal such determination. Such
16 right of appeal shall be consistent with the
17 rights of appeal of group health plans.”.

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

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

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

24 (2) by adding at the end the following new
25 paragraph:

1 “(9) EXCEPTION.—

2 “(A) IN GENERAL.—Clause (ii) of para-
3 graph (2)(B) and any reporting required by
4 paragraph (8) shall not apply with respect to
5 any settlement, judgment, award, or other pay-
6 ment by an applicable plan constituting a total
7 payment obligation to a claimant of not more
8 than the single threshold amount calculated by
9 the Secretary under subparagraph (B) for the
10 year involved.

11 “(B) ANNUAL COMPUTATION OF THRESH-
12 OLDS.—Not later than November 15 before
13 each year, the Secretary shall calculate and
14 publish a single threshold amount for settle-
15 ments, judgments, awards, or other payments
16 for conditional payment obligations arising from
17 liability insurance (including self-insurance) and
18 for alleged physical trauma-based incidents (ex-
19 cluding alleged ingestion, implantation, or expo-
20 sure cases) subject to this section for that year.
21 Each such annual single threshold amount for
22 a year shall be set such that the expected aver-
23 age amount to be credited to the Medicare trust
24 funds of collections of conditional payments
25 from such settlements, judgments, awards, or

1 other payments for each of liability insurance
2 (including self-insurance), workers' compensa-
3 tion laws or plans, and no fault insurance sub-
4 ject to this section shall equal the expected cost
5 of collection incurred by the United States (in-
6 cluding payments made to contractors) for a
7 conditional payment from each of liability insur-
8 ance (including self-insurance) and alleged
9 physical trauma- based incidents (excluding al-
10 leged ingestion, implantation or exposure cases)
11 subject to this section for the year. At the time
12 of calculating, but before publishing, the single
13 threshold amount for a year, the Secretary shall
14 inform, and seek review of, the Comptroller
15 General of the United States with regard to
16 such amount. The Secretary shall include, as
17 part of such publication for a year—

18 “(i) the expected cost of collection in-
19 curred by the United States (including
20 payments made to contractors) for a condi-
21 tional payment arising from liability insur-
22 ance (including self-insurance) and from
23 alleged physical trauma-based incidents
24 (excluding alleged ingestion, implantation
25 or exposure cases; and

1 “(ii) a summary of the methodology
2 and data used by the Secretary in com-
3 puting each such threshold amount and
4 such cost of collection.

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

13 “(D) REPORT TO CONGRESS.—Not later
14 than November 15 before each year, the Sec-
15 retary shall submit to the Congress a report on
16 a single threshold amount for settlements, judg-
17 ments, awards, or other payments for condi-
18 tional payment obligations arising from each of
19 liability insurance (including self-insurance)
20 claims for ingestion, implantation and exposure
21 cases, workers compensation cases, and no fault
22 insurance cases subject to this section for that
23 year. For each such report, the Secretary
24 shall—

1 “(i) calculate each such threshold
2 amount by using the methodology de-
3 scribed in subparagraph (B); and

4 “(ii) include a summary of the meth-
5 odology and data used in calculating each
6 such threshold amount and the amount of
7 expected savings under this title achieved
8 by the Secretary implementing such
9 thresholds.”.

10 (b) **EFFECTIVE DATE.**—The amendments made by
11 subsection (a) shall apply to years beginning more than
12 4½ months after the date of the enactment of this Act.

13 **SEC. 4. REPORTING REQUIREMENT.**

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 with
21 respect to each claimant.”; and

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

24 “(I) **REGULATIONS.**—Not later
25 than 60 days after the date of the en-

1 actment of this subparagraph, the
2 Secretary shall publish a notice in the
3 Federal Register soliciting proposals,
4 which will be accepted during a 60-
5 day period, for the specification of
6 practices for which sanctions will and
7 will not be imposed under subpara-
8 graph (E), including not imposing
9 sanctions for good faith efforts to
10 identify a beneficiary pursuant to this
11 paragraph under an applicable entity
12 responsible for reporting information.
13 After considering the proposals so
14 submitted, the Secretary, in consulta-
15 tion with the Attorney General, shall
16 publish in the Federal Register, in-
17 cluding a 60-day period for comment,
18 proposed specified practices for which
19 such sanctions will and will not be im-
20 posed. After considering any public
21 comments received during such pe-
22 riod, the Secretary shall issue final
23 rules specifying such practices.”.

1 **SEC. 5. USE OF SOCIAL SECURITY NUMBERS AND OTHER**
2 **IDENTIFYING INFORMATION IN REPORTING.**

3 Section 1862(b)(8)(B) of the Social Security Act (42
4 U.S.C. 1395y(b)(8)(B)) is amended by adding at the end
5 (after and below clause (ii)) the following: “Not later than
6 18 months after the date of enactment of this sentence,
7 the Secretary shall modify the reporting requirements
8 under this paragraph so that an applicable plan in com-
9 plying with such requirements is permitted but not re-
10 quired to access or report to the Secretary beneficiary so-
11 cial security account numbers or health identification
12 claim numbers, except that the deadline for such modifica-
13 tion shall be extended by a period (specified by the Sec-
14 retary) of up to 12 months if the Secretary notifies the
15 Committees of jurisdiction of the House of Representa-
16 tives and of the Senate that prior deadline for such modi-
17 fication threatens patient privacy or the integrity of the
18 secondary payer program under this subsection”.

19 **SEC. 6. STATUTE OF LIMITATIONS.**

20 (a) IN GENERAL.—Section 1862(b)(2)(B)(iii) of the
21 Social Security Act (42 U.S.C. 1395y(b)(2)(B)(iii)) is
22 amended by adding at the end the following new sentence:
23 “An action may not be brought by the United States
24 under this clause with respect to payment owed unless the
25 complaint is filed not later than 3 years after the date
26 of the receipt of notice of a settlement, judgment, award,

1 or other payment made pursuant to paragraph (8) relating
2 to such payment owed.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply with respect to actions brought
5 and penalties sought on or after 6 months after the date
6 of the enactment of this Act.

