H. R. 6490

To amend title XVIII of the Social Security Act to establish a market pricing program for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) under part B of the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2012

Mr. Price of Georgia (for himself, Mr. Altmire, Mrs. Blackburn, Mr. Deutch, Mr. Wilson of South Carolina, Ms. Castor of Florida, Mr. Tiberi, Mr. Braley of Iowa, Mr. Latham, Mr. Barrow, Mr. King of Iowa, Mr. Kelly, Mr. LaTourette, and Mrs. Ellmers) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 establish a market pricing program for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) under part B of the Medicare program.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Medicare DMEPOS
6 Market Pricing Program Act of 2012”.

112TH CONGRESS
2D SESSION
SEC. 2. ESTABLISHMENT OF DMEPOS MARKET PRICING PROGRAM AS REPLACEMENT FOR COMPETITIVE BIDDING PROGRAM.

(a) IN GENERAL.—Part B of title XVIII of the Social Security Act is amended by inserting after section 1847B the following new section:

“DMEPOS MARKET PRICING PROGRAM

“Sec. 1847C. (a) Establishment.—

“(1) IN GENERAL.—The Secretary shall establish and implement a market pricing program (in this section referred to as ‘market pricing program’) under which auctions are conducted in eligible market areas (as defined in paragraph (3)) throughout the United States for the furnishing under this part of market priced items and services (as defined in subsection (b)) for which payment is made under this part.

“(2) ROLES OF AUCTION EXPERT AND MARKET MONITOR.—The elements of the market pricing program, including eligible market areas and auction design, shall be established and operated in consultation with, and after input and review by, the auction expert and the market monitor under subsection (g).

In this section, the terms ‘auction expert’ and ‘market monitor’ refer to the respective auction expert
and market monitor contracted with under paragraph (1) or (2), respectively, of subsection (g).

“(3) IMPLEMENTATION.—The market pricing program shall be implemented in eligible market areas consistent with the following:

“(A) Market pricing is applied to payments under this part in 20 percent of eligible market areas for market priced items and services furnished in 2014.

“(B) Market pricing is applied to payments under this part in an additional 10 percent of eligible market areas for market priced items and services furnished in 2015.

“(C) Market pricing is applied to payments under this part in an additional 10 percent of eligible market areas in each subsequent year until the market pricing program is applying to items and services furnished in 100 percent of eligible market areas throughout the United States.

“(D) Once the market pricing program is applied throughout the United States under subparagraph (C), the Secretary shall conduct auctions for different eligible market areas throughout the United States on an ongoing
and rotating basis covering 10 percent of eligible market areas no later than March for each subsequent year.

“(E) The requirements of this section shall apply to each subsequent round of market-priced auctions in the same manner that such requirements apply to the initial market-priced auction.

“(4) **Eligible Market Areas.—**

“(A) **In General.**—In this section and section 1834, the term ‘eligible market areas’ means areas of the United States established by the Secretary.

“(B) **Market Areas Must Reflect Economic Interdependency.**—In determining and selecting eligible market areas, the Secretary shall choose, from among counties, aggregations of counties, or parts of counties, market areas that form an economically interdependent area reflecting standard econometric market models. Nothing in this subparagraph shall preclude the Secretary from subdividing a large county (as determined by the Secretary, taking into account population and geographic
size) in establishing market areas in order to comply with this subparagraph.

“(C) Selection of market areas.—In selecting eligible market areas in which an auction will be conducted under this section, the Secretary shall ensure that several market areas of each econometric model for a market area specified in subparagraph (B) are chosen.

“(D) Exclusion of certain areas.—The Secretary shall not include as an eligible market area any area described in clause (iii) of section 1847(a)(1)(D) before the year specified in such clause.

“(5) Application of certain policies applicable to competitive acquisition program.—The following provisions of section 1847(a)(1) shall apply to the market pricing program in the same manner as they apply to the competitive acquisition program under such section except as otherwise provided:

“(A) Subparagraph (C) (relating to waiver of certain provisions).

“(B) Subparagraph (E) (relating to verification by OIG), except that the assessment shall be of market pricing and subsequent price-
ing determinations that are the basis for auc-
tion prices and single payment amounts for
items and services in eligible market areas and
shall be conducted in the first two years of the
market pricing program and may continue in
subsequent years of the program.

“(C) Subparagraph (F) (relating to feed-
back on missing financial documentation), ex-
cept that any reference to a round of a program
is deemed a reference to a year of the market
pricing program.

“(b) MARKET PRICED ITEMS AND SERVICES DE-
FINED.—

“(1) IN GENERAL.—In this section, subject to
paragraph (2), the term ‘market priced items and
services’ means the following:

“(A) Oxygen supplies and equipment.

“(B) Standard power wheelchairs, power
scooters and related accessories.

“(C) Manual wheelchairs.

“(D) Enteral nutrients, equipment, and
supplies.

“(E) Continuous positive airway pressure
devices, respiratory assistive devices, and re-
lated supplies.
“(F) Hospital beds and related accessories.
“(G) Walkers and related accessories.
“(H) Support services (Group 2 mattresses and overlays).
“(I) Negative pressure wound therapy pumps and related supplies and accessories.
“(J) Diabetic supplies.
“(K) Off-the-shelf orthotics described in section 1847(a)(2)(C).
“(L) Other items and services (other than those items and services specified in paragraph (2)) that could have been subject to participation in the competitive acquisition programs under section 1847(a)(1).
“(2) EXCLUDED ITEMS.—Such term does not include the following:
“(A) Adjustable skin protection cushions used in connection with a wheelchair.
“(B) Complex rehabilitative power wheelchairs and related accessories.
“(C) Manual wheelchairs billed using current HCPCS Codes K0005 or E1161, and related accessories for such wheelchairs.
“(c) MARKET PRICING PROGRAM REQUIREMENTS.—
“(1) IN GENERAL.—The Secretary shall establish an auction design through the process described in paragraph (2), that meets the requirements of paragraph (3), and shall ensure that the first auction will be conducted for all eligible market areas no later than March 1, 2013.

“(2) AUCTION PROCESS; INPUT OF STAKEHOLDERS; DESIGN.—

“(A) TRANSPARENT PROCESS REQUIRED.—

“(i) IN GENERAL.—In establishing such auction design, the Secretary shall utilize an open and transparent process that involves all relevant stakeholders (as defined in clause (ii)) in the market.

“(ii) RELEVANT STAKEHOLDERS.—For purposes of clause (i), the term ‘relevant stakeholders’ means suppliers of market priced items and services (and trade associations representing such suppliers), physicians, and individuals entitled to benefits under this title (or representatives of such individuals).

“(B) DRAFT AUCTION DESIGN.—
“(i) IN GENERAL.—Not later than 2
months after the date the auction expert
first begins service under subsection (g)(1),
the auction expert shall develop a draft
auction design for all eligible areas and all
market priced items and services.

“(ii) STANDARDS.—In developing
such auction design, the auction expert
shall develop standards for eligible bidders,
including—

“(I) the financial qualifications
for an entity to participate in the
market pricing program; and

“(II) the quality of products and
related services.

“(iii) DESIGN USED IN EXPEDITED
RULEMAKING PROCESS.—Such design shall
serve as the basis for an expedited rule-
making process for the publication of the
proposed auction design and solicitation of
public comments on such design. Section
1871(b)(1) shall not apply to such process.

“(C) DESIGN CONFERENCE.—

“(i) IN GENERAL.—Not later than 4
months after the date the auction expert
first begins service under subsection (g)(1),
the auction expert shall convene a design
conference (in this paragraph referred to
as the ‘design conference’) for the auction
process under this section. The auction ex-
pert shall chair the conference.

“(ii) PARTICIPANTS.—The partici-
pants at the design conference shall in-
clude at least the following:

“(I) SUPPLIERS OF DMEPOS.—
Representatives of market priced
items and services.

“(II) BENEFICIARIES.—Rep-
resentatives of individuals entitled to
benefits under this part.

“(III) CMS.—The Administrator
of the Centers for Medicare & Med-
icaid Services and other appropriate
Federal personnel.

“(IV) PROGRAM ADVISORY AND
OVERSIGHT COMMITTEE.—The mem-
bers of the committee referred to in
paragraph (3).

“(iii) PURPOSE OF CONFERENCE.—
The purpose of the design conference shall
be to establish an efficient auction consistent with best practices and actuarial science.

“(iv) ELEMENTS OF CONFERENCE.—

“(I) At the design conference the auction expert shall provide a demonstration of the preliminary auction design.

“(II) Attendees at the conference will participate in a mock auction based upon the preliminary design.

“(III) The auction expert shall establish working committees on major issues.

“(IV) The design conference shall be recorded and made available over the Internet either through simultaneous Web cast or otherwise.

“(V) The Federal Advisory Committee Act shall not apply with respect to the working committee established under subclause (III).

“(D) RECOMMENDATIONS.—

“(i) WORKING COMMITTEES.—Not later than 2 months after the last day of
the design conference, each working com-
mittee established under subparagraph
(C)(iv)(III) shall submit to the auction ex-
pert the committee’s recommendations on
the final design for auctions under this
section.

“(ii) Final design recommenda-
tion.—Not later than 3 months after the
last day of the design conference, the auc-
tion expert shall submit to the Secretary
final recommendations on the auction de-
sign.

“(3) Requirements.—In establishing the auc-
tion design, the Secretary shall ensure that rates of
payment developed through the auction process—

“(A) are market-based and based on bind-
ing bids and clearing prices; and

“(B) do not result in a diminution of ac-
cess to or quality of items of market priced
items and services in the applicable market
areas.

“(d) Conduct of auction.—

“(1) Initial auction.—No later than March 1
of each year (beginning with 2013), the Secretary
shall conduct an auction (in this section referred to
as a ‘market-priced auction’) from among entities
supplying market priced items and services in an eli-
gible market area that is selected in the auction de-
sign. The first such auction shall conclude no later
than March 30, 2013. Market-based auctions shall
be conducted in accordance with an auction design
developed under subsection (e).

“(2) Items and services subject to auc-
tion.—

“(A) In general.—In each eligible mar-
ket area in which a market-priced auction is
conducted, the Secretary shall select 2 items
and services from among the market priced
items and services.

“(B) All listed items and services to
be subject to auction.—The Secretary shall
ensure in the market-priced auction that each
lead product that is identified under paragraph
(4) from among each market priced item and
service is subject to auction among all eligible
market areas. The Secretary shall ensure that
each product category is auctioned in at least a
sufficient number of eligible market areas to
produce a sample of bids based on the percent-
ages set forth in subsection (a)(3).
“(3) Requirements to submit bid in auction.—

“(A) Submission of bids.—Any supplier that complies with the requirements of subparagraph (B) and that is identified by the Secretary pursuant to paragraph (5)(C) as a supplier of a market priced item or service that is the subject of a market-priced auction in an eligible market area may submit a bid at such auction.

“(B) Financial assurances.—

“(i) In general.—In order to be eligible to participate in a market-priced auction, a supplier must submit a cash deposit in an amount determined by the Secretary.

“(ii) Letter of credit in lieu of cash deposit.—The Secretary may, in the Secretary’s sole discretion, accept a letter of credit from a financial institution acceptable to the Secretary instead of the cash deposit otherwise required under clause (i).

“(C) Treatment of deposits submitted by suppliers.—
“(i) SUCCESSFUL BIDDERS.—The Secretary shall retain as a performance guarantee the deposit submitted under subparagraph (B)(i) of a supplier that has submitted a bid that is selected at a market-priced auction.

“(ii) UNSUCCESSFUL BIDS.—If a supplier submits a bid that is not accepted at the auction, any such deposit shall be returned to the supplier.

“(iii) DEPOSIT RETURN REQUIREMENTS FOR PARTIALLY SUCCESSFUL SUPPLIERS.—If a supplier submits a bid that is accepted at the auction, but the supplier is not awarded a contract for the full amount of the bid, the Secretary shall provide for a proportionate return of any such deposit.

“(4) LEAD PRODUCT SELECTION.—

“(A) IN GENERAL.—For each item and service that is the subject of a market-priced auction, the Secretary shall establish a lead product for each product category specified in subsection (b)(1). Such lead product shall be
selected based upon cost and utilization of the product under this part.

“(B) Lead product clearing price establishes clearing price for other products.—

“(i) Lead product as reference point for other products.—The lead product selected under subparagraph (A) shall be used as a reference point for all other products (categorized by healthcare common procedure coding system code) in the same category as the lead product. Such lead product shall be assigned a weight of 100 percent.

“(ii) Additional products in each product category.—Every other product in the same product category as the lead product identified under subparagraph (A) shall be assigned based upon each auction a weight expressed as a percentage of the lead product. The Secretary shall establish a single capacity-weighted average for each such other product in the same product category based upon the relative price value submitted from eligible bidders.
in advance of the auction for such other product relative to the price of the lead product. The Secretary shall establish a price index that is the single capacity-weighted average for each product in a product category in a market area.

“(iii) Establishing clearing price.—The Secretary shall establish the clearing price for each market priced item and service that is subject to the auction based upon the data submitted under this subparagraph. Such clearing price shall be equal to the highest cost bid (or, in the case of a product described in clause (ii), such price bid weighted by the single capacity-weighted average established under clause (ii)) that will meet capacity targets in the eligible market area for such item and service.

“(5) Conduct of auction.—

“(A) In general.—The Secretary shall establish timelines for the conduct of the market-priced auction that are consistent with the provisions of this paragraph.
“(B) Three months before auction date.—Approximately three months before the scheduled auction date, the Secretary shall detail auction rules that are consistent with the auction plan developed under this section. These rules shall include—

“(i) financial and other qualification requirements for bidders;

“(ii) algorithms for determining winners and prices as a function of bids;

“(iii) performance obligations of contract suppliers, guarantees, and penalties for non-conformance;

“(iv) the product categories to be selected (and their related healthcare common procedure coding system codes) from within the market priced items and services;

“(v) the lead product for each product category selected under paragraph (4)(A); and

“(vi) the eligible market areas in which a market-priced auction will be conducted.
“(C) Two weeks before auction date.—Approximately 2 weeks before the scheduled auction date, the Secretary shall identify the qualified suppliers eligible to submit bids. In carrying out this subparagraph, the Secretary shall specify—

“(i) bidder capacity;

“(ii) bidder eligibility by eligible market area;

“(iii) for each market area, the lead price for the lead product established under paragraph (4)(A);

“(iv) the price index (described in paragraph (4)(B)(ii)) in each market area; and

“(v) for each eligible bidder, its historic capacity for each item and service that will be subject to auction pursuant to paragraph (1) in the eligible market area.

“(D) Pre-auction bidders outreach.—Before each auction, the Secretary shall provide an open meeting or other form of outreach at which prospective bidders in eligible market areas in which the auction will be conducted are provided information concerning the
auction and have the opportunity to have the
auction expert respond to questions concerning
the conduct of the auction.

“(E) DURING AUCTION.—During the con-
duct of the auction, the Secretary shall an-
nounce—

“(i) the time of the end of the round
of auctioning; and

“(ii) the history of prior rounds in-
cluding the aggregate supply at the end of
the round price for each product area by
round.

“(F) IMMEDIATELY AFTER EACH AUCTION
ROUND.—Not later than 15 minutes after the
end of each auction, the Secretary shall an-
nounce—

“(i) the aggregate supply for each
item and service that is the subject of the
auction at the price established during the
auction;

“(ii) for each supplier who has partici-
pated in the auction, its own supply for all
prices (from the initial starting price to the
end of round price) for each item and serv-
ance that is the subject of the auction; and
“(iii) revised schedule of rounds for
the next bidding day.

“(G) AT CONCLUSION OF FINAL AUCTION
ROUND.—Not later than 15 minutes after the
end of the final auction round, the Secretary
shall announce—

“(i) a list of winning suppliers;

“(ii) the market clearing price for
each item and service that is the subject of
the auction; and

“(iii) for each bidder and in each eli-
gible market area, the bidder’s supply for
all prices (from the initial starting price to
the end of round price).

“(H) FINAL ACTIONS.—Not later than one
week after the end of the final auction round,
the Secretary shall enforce the performance
guarantees received from each winning bidder
(including a list of bidders who failed to provide
performance guarantees in accordance with
paragraph (3)(B) within one week after the end
of the auction).

“(6) CONDITIONS OF AWARDING CONTRACT.—

“(A) IN GENERAL.—The Secretary shall
award a contract to any entity in an eligible
market area in which an auction is conducted and whose bid submitted pursuant to paragraph (3)(A) is below the clearing price established pursuant to paragraph (4)(B)(iii).

“(B) TERMS OF CONTRACT.—

“(i) MANDATORY ACCEPTANCE OF CONTRACT.—A supplier that submits a bid below such clearing price shall be treated as having agreed to and accept the contract awarded pursuant to subparagraph (A).

“(ii) CONTRACT TERMS.—A contract awarded pursuant to subparagraph (A) shall be valid for 2 years, with the first such contract for the period beginning on July 1, 2013.

“(iii) NO REQUIREMENT TO SUPPLY UP TO BID AMOUNT.—Nothing in this subsection shall require a supplier that is awarded a contract pursuant to subparagraph (A) to supply a marked priced item or service that is the subject of an auction in the eligible market area beyond the level of demand for such item or service in the eligible market area, even if such level is
below the level that the supplier assumed in its bid.

“(C) Ensuring Adequate Selection of Contractors.—The Secretary may not award a contract to any entity under the auction to furnish such items or services unless the Secretary finds that the conditions described in section 1847(b)(2)(A) apply with respect to an entity receiving a contract under this paragraph.

“(D) Sufficient Capacity.—The Secretary shall establish a process to ensure that a supplier has sufficient capacity to supply and fulfill the patient demand for the item or service involved in the market area involved. Such process shall be based upon the historic capacity of the supplier. For purposes of the preceding sentence, the term ‘historic capacity’ means the capacity of the supplier in the market area in the preceding year.

“(E) Limits on Suppliers.—Each bidding supplier who has no historic capacity in the market area subject to an auction shall be assigned a base capacity for each item and service made available under the auction of 1 per-
cent of the total dollar value of that item or service made available in the eligible market area.

“(7) PAYMENT AMOUNT SHALL EQUAL AUCTION CLEARING PRICE.—

“(A) IN GENERAL.—With respect to market priced items or services that are provided in an eligible market area in which—

“(i) a market-priced auction is conducted, the auction price determined at such auction for such item in such eligible market area; or

“(ii) such an auction is not conducted, the auction price determined at an auction for those items that is conducted in another eligible market area, as adjusted by the factor described in subparagraph (B)(iv),

shall constitute the payment amount under section 1834(a)(1)(H)(i)(I) or section 1842(s), as the case may be.

“(B) SUPPLYING ITEMS OR SERVICES.—

“(i) IN GENERAL.—No entity other than a supplier of a market priced item or service that is the subject of a market-
priced auction in an eligible market area
and that has been selected as the winning
bidder in that eligible market area shall be
eligible to receive a contract under para-
graph (6)(A) in such market area.

“(ii) Supplying items in economically equivalent markets.—A supplier
of a market priced item or service that has
not been selected as the winning bidder in
the eligible market area described in clause
(i) shall, subject to clauses (iii) and (iv), be
eligible to supply any other market priced
item or service that was not the subject of
an auction in that eligible market area but
that was the subject of a market-priced
auction in another economically similar eli-
gible market area (as determined by the
Secretary).

“(iii) Supplier must accept auction price.—Clause (ii) shall only apply
to a supplier that agrees to accept the
price determined at an auction in another
eligible market area for a market priced
item or service.
“(iv) Appropriate Adjustments.—

The Secretary shall develop an adjustment factor to reflect economic differences between the market area that was the subject of the market-priced auction for the item or service and the market area in which the supplier is located. The Secretary shall use such adjustment factor to adjust the payment amount made to a supplier pursuant to clause (iii). The Secretary, auction expert, and market monitor shall consult with relevant stakeholders in developing such factor.

“(8) Monitoring of Access and Quality.—

“(A) In General.—The Secretary shall work with stakeholders to develop performance measures for suppliers that are awarded a contract pursuant to paragraph (6)(A) to ensure compliance with the requirements of this subsection and the measures developed by the auction expert under subsection (c)(2)(B)(ii) and to monitor the performance of suppliers.

“(B) Enforcement.—If the Secretary determines that there has been a material failure of a supplier that has been awarded a con-
tract under paragraph (6)(A) to comply with such requirements and measures, the Secretary shall implement enforcement measures. Such enforcement measures may include—

“(i) a formal warning letter;

“(ii) forfeiture of amounts submitted as a performance deposit pursuant to paragraph (3)(B)(i) or paragraph (8);

“(iii) termination of a contract awarded pursuant to paragraph (6)(A); or

“(iv) termination of the supplier’s agreement to participate in the program established under this title for a period not to exceed 2 years.

“(C) Appeals Mechanism.—The Secretary shall ensure that, prior to the imposition of an enforcement measure under subparagraph (B), a supplier subject to such measure has an opportunity to appeal imposition of the measure.

“(e) Application of Competitive Acquisition Program Provisions.—In implementing the market pricing program under this section, the provisions of section 1847(b) shall be applied as follows:
“(1) Paragraph (3) shall apply, except that, for purposes of contracts awarded under the market pricing program, subparagraph (B) of such paragraph shall be applied by substituting ‘2 years’ for ‘3 years’.

“(2) Subject to subsection (d)(7)(B), paragraph (4) shall apply.

“(3) Paragraph (5) shall apply, except that—

“(A) the reference in subparagraph (A) of such paragraph to subsection (a)(2) is deemed a reference to subsection (b)(1) of this section; and

“(B) the reference in subparagraph (B)(i) of such paragraph to subparagraph (A) is deemed a reference to subsection (d)(4) of this section.

“(4) Paragraph (6) shall apply, except that in applying subparagraph (D)—

“(A) the term ‘small suppliers’ shall mean an entity with a gross revenue that does not exceed $3,500,000; and

“(B) the Secretary shall ensure that at least 30 percent of the number of contractors that are awarded contracts pursuant to subsection (d)(6) of this section for each product
category in an eligible market area are small
suppliers (as defined in subparagraph (A)).

“(5) Paragraph (7) shall not apply.
“(6) Paragraph (8) shall apply.
“(7) Paragraph (9) shall apply, except that
such paragraph shall be applied as if a reference to
a bidding program includes a reference to the mar-
ket pricing program.
“(8) Paragraph (10) shall apply, except that
such paragraph shall be applied as if a reference to
a competitive acquisition program includes a ref-
ference to the market pricing program.
“(9) Paragraph (11) shall not apply, except
that—

“(A) the pendency of any claim for review
under this section shall not delay any auction
round conducted pursuant to subsection (a)(3)
or (d)(1); and
“(B) there shall be no administrative or ju-
dicial review of any claim to enjoin the oper-
ation of a market-priced auction conducted.
“(f) TRANSPARENCY REQUIREMENTS FOR MARKET
PRICING PROGRAM.—
“(1) IN GENERAL.—In implementing the mar-
ket pricing program, the Secretary shall provide for
publication, on an Internet Web site operated by the Secretary, of the following information:

“(A) The qualifications necessary to submit a bid pursuant to subsection (d)(3).

“(B) The financial requirements and ratios of such requirements necessary for an entity described in subparagraph (A) that are applicable for purposes of subsection (d)(3)(B)(i).

“(C) The quality standards and the performance standards developed by the auction expert pursuant to subsection (c)(2)(B)(ii).

“(D) The calculation of the total market capacity of an eligible market area for purposes of subsection (d)(5)(C)(i).

“(E) The methodology developed for an adjustment factor applied pursuant to subsection (d)(7)(B)(iv).

“(F) The process for soliciting and accepting bids for purposes of paragraphs (3) and (5) of subsection (d).

“(G) For purposes of subsection (d)(5)—

“(i) the number of bidders at the auction;

“(ii) the number of bids accepted and rejected at the auction; and
“(iii) with respect to rejected bidders, the specific reasons for rejections of any bid, and, with respect to any such rejection, a means of ensuring the availability of the process described in paragraph (2) to a rejected bidder.

“(H) The calculation of and compliance with the requirement of section 1847(b)(6)(D), as made applicable to the market pricing program by subsection (e)(4).

“(2) TRANSPARENT APPEALS PROCESS.—

“(A) IN GENERAL.—For purposes of complying with paragraph (1)(G)(iii), the Secretary shall develop an appeals process under which an entity that submits a bid under subsection (d)(3)(A) that is rejected for participation in an auction may challenge such rejection.

“(B) TIMELY RESPONSE TO APPEAL.—The process established pursuant to subparagraph (A) shall include a requirement that the Secretary respond to the rejected entity within 45 days of submission of an appeal by the entity.

“(g) RELIANCE ON AUCTION EXPERT AND MARKET MONITOR IN ESTABLISHING AND OPERATING MARKET
“(1) Auction expert.—

“(A) In general.—The Secretary shall, not later than 3 months after the date of the enactment of this section, through the Office of the Assistant Secretary for Planning and Evaluation, enter into a contract with an individual to serve as the auction expert to assist in the design, development, implementation and functioning of the auction to be conducted pursuant to subsection (b). The auction expert shall report and be accountable to the Secretary.

“(B) Selection of auction expert; term; access to information.—

“(i) Competitive process.—The selection of the individual to serve as the auction expert under subparagraph (A) shall be undertaken through a competitive process.

“(ii) Qualifications.—An individual may not be selected as the auction expert unless the individual—

“(I) has appropriate educational credentials; and
“(II) has experience in implementing auctions of similar complexity in government programs.

“(iii) DISQUALIFICATIONS.—An individual may not be selected as the auction expert if such individual—

“(I) is a current government employee;

“(II) is a former employee of the Centers for Medicare & Medicaid Services who had any responsibilities with respect to the program under section 1847; or

“(III) is a current or former contractor for the Centers for Medicare & Medicaid Services that participated in the implementation of the competitive acquisition program under section 1847(a).

“(iv) TERM OF CONTRACT.—The contract for the initial auction expert under this paragraph shall be for a period of 4 years and thereafter such contract may be renewed for additional periods of 4 years or another auction expert selected.
“(v) Access to Information.—The Secretary shall make available to the auction expert all applicable information (including confidential information) on the relevant markets.

“(2) Market Monitor.—

“(A) In General.—The Secretary shall, not later than 3 months after the date of the enactment of this section, through the Office of the Assistant Secretary for Planning and Evaluation, enter into a contract with an individual to serve as the market monitor to monitor the design, development, and functioning of the auction to be conducted under subsection (b). The market monitor shall report and be accountable to the Secretary.

“(B) Selection of Market Monitor; Term of Contract; Access to Information.—The provisions of subparagraph (B) of paragraph (1) shall apply with respect to the market monitor in the same manner as they apply with respect to the auction expert.

“(C) Functions of Market Monitor.—

“(i) Public Comments on Auction Design.—The market monitor shall pro-
vide public comments on the auction design developed under subsection (e) within one month of the date of its publication.

“(ii) PARTICIPATE IN DESIGN CONFERENCE.—The market monitor shall participate in the design conference and, at the conference, provide a presentation on the auction design.

“(iii) REVIEW OF FINAL DESIGN.—The market monitor shall review the final auction design recommendations submitted under subsection (c)(2)(D) and, within one month of the release of such recommendations, provide public comment on them.

“(iv) ANNUAL REPORT.—The market monitor shall provide an annual report to Congress on the operation and functioning of the market pricing program. Each such report shall include information on—

“(I) potential problems with the program;

“(II) recommended solutions to problems identified pursuant to sub-clause (I);
“(III) the appropriateness of HCPCS codes selected for auctions;
“(IV) an evaluation on the ability of individuals eligible for benefits under this part to obtain items and services subject to the market pricing program;
“(V) any adverse health effects resulting from implementation of the program;
“(VI) any material deterioration in the quality of items and services provided under the program;
“(VII) the costs of any preventable hospitalizations for market priced items and services;
“(VIII) any negative business consequences to the supplier of any market priced items and services occurring as a result of errors made in the conduct of the program; and
“(IX) any other effects identified by the market monitor.
“(3) Reconstitution of and report by Program Advisory Committee.—
“(A) IN GENERAL.—With respect to the Program Advisory and Oversight Committee established under section 1847(c), notwithstanding paragraphs (4) and (5) of such section and for the purposes of preparing the report under subparagraph (B) of this paragraph, the Secretary shall reconstitute the Committee and extend the terms of its members (and its termination date) through December 31, 2014, and the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the reconstituted Committee.

“(B) REPORT.—Not later than December 31, 2014, such Committee shall submit to the Congress a report on the market pricing program. The report shall include information on the design of the market pricing program and access to and quality of market priced items and services.

“(4) ONGOING MONITORING BY SECRETARY.—The Secretary shall monitor the effects of the market pricing program to guard against the occurrence of any negative effects specified in paragraph (2)(C)(iv). Such monitoring shall include public availability of the number of suppliers providing
market priced items and services in an eligible mar-
ket area during each year of the operation of the
market pricing program.”.

SEC. 3. TERMINATION AND TRANSITION FROM DMEPOS

COMPETITIVE BIDDING PROGRAM.

(a) Termination of Competitive Acquisition
Program.—Section 1847(a)(1) of the Social Security Act
(42 U.S.C. 1395w–3(a)(1)) is amended—

(1) in subparagraph (B), by striking “The pro-
grams” and inserting “Subject to subparagraph (G),
the programs”; and

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

“(G) Termination of Program; Transi-
tion.—

“(i) No additional competition
rounds.—Notwithstanding subparagraph
(B), the competition under this section
shall end with round 1. The Secretary shall
take no further action to implement round
2 of the competitive acquisition program,
the national mail order competitive acquisi-
tion program, or any subsequent round of
the competitive acquisition program under
this section.
“(ii) CONTRACT TERMINATION.—The contracts awarded under this section before the date of the enactment of this subparagraph shall terminate on June 30, 2013, and no payment shall be made under this title after such date based on such a contract. To the extent that any damages may be applicable as a result of the termination of such contracts, such damages shall be payable from the Federal Supplementary Medical Insurance Trust Fund under section 1841. Nothing in this clause shall be construed to provide an independent cause of action or right to administrative or judicial review with regard to the termination provided under this clause.”.

(b) TRANSITIONAL PAYMENT RULES.—

(1) PAYMENT FOR DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(1)(F) of the Social Security Act (42 U.S.C. 1395m(a)(1)(F)) is amended—

(A) in clause (i)—

(i) by inserting “and before July 1, 2013,” after “January 1, 2011,”; and

(ii) by adding “and” at the end;
(B) in clause (ii)—

(i) by striking “(and, in the case of covered items” and all that follows through “subject to clause (iii) shall)” ; and

(ii) by striking “; and” at the end and inserting a period; and

(C) by striking clause (iii).

(2) AWARDS TO QUALIFIED SUPPLIERS NOT SELECTED IN COMPETITIVE ACQUISITION PROGRAM.—

Section 1847(b)(4) of such Act (42 U.S.C. 1395w–3(b)(4)) is amended—

(A) by striking “The Secretary may limit” and inserting “Subject to subparagraph (C), the Secretary may limit”; and

(B) by adding at the end thereof the following new subparagraph:

“(C) NON-CONTRACTED SUPPLIERS IN COMPETITIVE ACQUISITION PROGRAM.—Beginning on the date of the enactment of this subparagraph and until the date of implementation of the market pricing program under section 1847C, the limit under subparagraph (A) shall not apply and the Secretary shall award a contract to any entity that—
“(i) submitted a bid in the competitive acquisition program;

“(ii) meets financial and quality standards and is otherwise qualified but was not awarded a contract under such program because the entity’s bid was above the pricing threshold to provide such items and services in a competitive acquisition area; and

“(iii) accepts the price established under such program as payment in full.”.

(3) Payment for off-the-shelf orthotics.—Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following new subparagraph:

“(I) Application of market pricing program; limitation of inherent reasonableness authority.—In the case of orthotics described in subsection (b)(1)(K) of section 1847C furnished on or after July 1, 2013, in an eligible market area, that are included in a market pricing program under such section—

“(i) the payment basis under this subsection for such orthotics furnished in such
area shall be the payment basis determined
under such market pricing program; and
“(ii) paragraphs (8) and (9) of section
1842(b) shall not be applied.”.

(c) Conforming Amendments to Market Pricing Policy.—

(1) In General.—Section 1834(a)(1) of the
Social Security Act (42 U.S.C. 1395m(a)(1)) is
amended by adding at the end the following new
subparagraph:

“(H) Application of Market Pricing
Program; Limitation of Inherent Reason-
ableness Authority.—

“(i) In General.—In the case of cov-
ered items or off-the-shelf orthotics fur-
nished on or after January 1, 2014, sub-
ject to subparagraph (G), that are included
in a market pricing program in an eligible
market area under section 1847C—

“(I) the payment basis under this
subsection in an eligible market area
for the 2 items and services described
in section 1847C(b)(1) that are se-
lected for auction in such area pursu-
ant to section 1847C(d)(2) shall be
the amount determined under the auction conducted in such eligible market area;

“(II) the payment basis under this subsection in an eligible market area for the items and services described in section 1847C(b)(1) that are not selected for auction in such area pursuant to section 1847C(d)(2) shall be the amount determined pursuant to an auction for those items that is conducted in another eligible market area, and adjusted by the factor described in section 1847C(d)(7)(B)(iv);

“(III) during the term of any contract awarded pursuant to section 1847C(d)(6) for an item and service described in subclause (I), the Secretary may not adjust the payment rate determined in section 1847(b)(13)(G) to take into account the effects of a later-conducted auction during that two-year contract period;
“(IV) at the termination of a contract awarded under section 1847C(d)(6) for an item or service described in subclause (I), the Secretary shall adjust the payment rate applicable under such contract to take into account the effects of a later-conducted auction; and

“(V) with respect to payment amounts applicable pursuant to subclause (II), the Secretary shall adjust the payment rate annually.

“(ii) Use of additional information.—The Secretary, after consultation with the auction expert under section 1847C, may (and, in the case of covered items furnished on or after January 1, 2016, shall) use information on the payment determined under such market pricing program to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area in which an auction has not been conducted pursuant to section 1847C(a) and in the case of such adjust-
(2) REGULATORY AUTHORITY.—Section 1834(a)(1)(G) of such Act (42 U.S.C. 1395w–3(a)(1)(G)) is amended—

(A) by inserting “OR MARKET PRICING” before “RATES” in the subparagraph heading;

(B) by striking “subparagraph (F)(ii)” and inserting “subparagraph (F)(ii), subparagraph (H)(iii),”; and

(C) by inserting “eligible market areas in which an auction has been conducted, on or after the first day of the year specified in section 1847C(a)(3)(A)” after “competitive acquisition areas”.

“(iii) CONTINUED USE OF ADDITIONAL INFORMATION.—In the case of covered items furnished on or after January 1, 2016, the Secretary shall continue to make such adjustments described in clause (ii) as, under such market pricing program, additional covered items are phased in or information is updated as contracts are renewed under such program.”.
(d) NEGATIVE PRESSURE WOUND THERAPY STANDARDS.—The Secretary of Health and Human Services, in consultation with relevant stakeholders (as defined in section 1847C(c)(2)(A)(ii) of the Social Security Act, as added by section 1) shall develop standards for coverage and quality of negative pressure wound therapy items and services (within the meaning of section 1847(a)(1)(D)(i)(IV) of such Act).

SEC. 4. OFFSET THROUGH REDUCTIONS IN PROGRAM SPENDING.

Section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) is amended—

(1) in subparagraph (K), by striking “and” at the end;

(2) in subparagraph (L)—

(A) by striking “and each subsequent year”; and

(B) by striking the period at the end of clause (ii) and inserting “; and”;

(3) by inserting after subparagraph (L) the following new subparagraphs:

“(M) for 2012—

“(i) the percentage increase in the consumer price index for all urban consumers (United States city average) for
the 12-month period ending with June of 2011, reduced by—

“(ii) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II);

“(N) in 2013—

“(i) in the case of items and services described in section 1847C(b) furnished in any geographic area (including related accessories, but only if such accessories are furnished with such items and services), −4.8 percent; and

“(ii) in the case of items and services not described clause (i), the amount specified in subparagraph (M); and

“(O) in 2014 and each subsequent year—

“(i) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by

“(ii) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”;

and

(4) in the matter following subparagraph (O) (as added by paragraph (3)), by striking “subpara-
1 graph (L)(ii)” and inserting in lieu thereof “clause
2 (ii) of subparagraphs (L), (M), and (O)”.

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