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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 1. SHORT TITLE.

This Act may be cited as the “Medicare DMEPOS Market Pricing Program Act of 2013”.

SEC. 2. 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 programs” and inserting “Subject to subparagraph (G), the programs”;

(2) in subparagraph (D), by striking clauses (ii) and (iii); and

(3) by adding at the end the following new subparagraph:

“(G) TERMINATION OF PROGRAM; TRANSITION.—

“(i) NO ADDITIONAL COMPETITION ROUNDS.—Notwithstanding subparagraph (B), the competition under this section shall end on December 31, 2013, with round 1. The Secretary shall take no further action to implement round 2 of the competitive acquisition program, the national mail order competitive acquisition program, or any subsequent round of the
competitive acquisition program under this
section.

“(ii) CONTRACT TERMINATION.—The
contracts awarded under this section be-
fore the date of the enactment of this sub-
paragraph shall terminate on July 1, 2013,
and no payment shall be made under this
title after such date based on such a con-
tract. 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 sec-
tion 1841. Nothing in this clause shall be
construed to provide an independent cause
of action or right to administrative or judi-
cial review with regard to the termination
provided under this clause.”.

SEC. 3. TRANSITIONAL PAYMENT AFTER TERMINATION OF
DMEPOS COMPETITIVE BIDDING PROGRAM.

(a) Transitional Payment Rules.—

(1) Payment for Durable Medical Equip-
ment.—
(A) IN GENERAL.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended—

(i) in subparagraph (F)(i)—

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

(II) by striking “, subject to subparagraphs (G) and (H),”;

(III) by adding “and” at the end;

(ii) in subparagraph (F)(ii)—

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

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

(iii) by striking clause (iii) of subparagraph (F);

(iv) by striking subparagraphs (G) and (H); and

(v) by adding at the end the following new subparagraph:

“(G) PAYMENT RATES IN ROUND 1 AREAS DURING TRANSITION.—
“(i) IN GENERAL.—In the case of covered items and services that are furnished in an area that had been designated by the Secretary as a competitive acquisition program under section 1847(a)(1)(B)(i)(I) on or after the date on which contracts for the furnishing of such covered items and services expire, the payment basis under this subsection for such items and services furnished in such area shall be the amount described in clause (ii) or (iii), as the case may be.

“(ii) PAYMENT RATES IN ROUND 2 FOR ITEMS AND SERVICES THAT ARE NOT DIABETIC TESTING SUPPLIES.—

“(I) IN GENERAL.—In the case of covered items that were selected to be furnished in the competitive acquisition program (excluding diabetic supplies) in a competitive acquisition area selected pursuant to section 1847(a)(1)(B)(i)(II) on or after July 1, 2013, and before the date on which the Secretary implements the market pricing program under section 1847C,
subject to subclause (II), the payment basis under this subsection for such items and services furnished in such areas shall be 95 percent of the amount established under this subsection.

“(II) Further reductions in 2014 and 2015.—In the case of covered items described in subclause (I) that are furnished during 2014, the payment basis under this subsection for such items furnished in such areas shall be reduced by 10 percent from the amount described in such subclause. In the case of such items and services that are furnished in such areas on or after January 1, 2015, and before the date on which the Secretary implements the market pricing program under section 1847C, the payment basis under this subsection for such items and services shall be further reduced by 10 percent after taking into account the reduction effected under the preceding sentence.
“(iii) Payment rates for diabetic supplies.—

“(I) In general.—In the case of all diabetic testing supplies, mail order and non-mail order (HCPCS Codes A4233, A4234, A4235, A4236, A4253, A4256, A4258, and A4259, including the KL modifier), effective July 1, 2013, and before the date on which the Secretary implements the market pricing program under section 1847C and subject to subclause (II), the payment basis under this subsection for such supplies shall be 90 percent of the amount otherwise established under this subsection.

“(II) Further reductions in 2014 and 2015.—In the case of supplies described in subclause (I) that are furnished during 2014, the payment basis under this subsection for such items furnished in such areas shall be reduced by 15 percent from the amount described in such subclause. In the case of such supplies
that are furnished in such areas on or after January 1, 2015, and before the date on which the Secretary implements the market pricing program under section 1847C, the payment basis under this subsection for such supplies shall be further reduced by 15 percent after taking into account the reduction effected under the preceding sentence.”.

(B) CONFORMING AMENDMENTS.—Section 1842(s) of the Social Security Act (42 U.S.C. 1395u(s)) is amended—

(i) in paragraph (3), in the matter preceding subparagraph (A), by inserting “and that are furnished in such an area on or before July 1, 2013” after “section 1847(a)”;

(ii) by adding at the end the following new paragraph:

“(4)(A)(i) In the case of items and services described in paragraph (2)(D) that are furnished in an area that had been designated by the Secretary as a competitive acquisition area under section 1847(a)(1)(B)(i)(I) on or after the date on which contracts for the furnishing of
such covered items and services expire, the payment basis under this subsection for such items and services furnished in such area shall be the amounts described in clause (ii).

“(ii)(I) In the case of items and services described in paragraph (2)(D) that were selected to be furnished in the competitive acquisition program in a competitive acquisition area selected pursuant to section 1847(a)(1)(B)(i)(II) on or after July 1, 2013, and before the date on which the Secretary implements the market pricing program under section 1847C, subject to subclause (II), the payment basis under this subsection for such items and services furnished in such areas shall be 95 percent of the amount otherwise established under this subsection.

“(II) In the case of covered items and services described in subclause (I) that were furnished during 2014, the payment basis under this subsection for such items and services furnished in such areas shall be reduced by 10 percent from the amount described in such subclause. In the case of such items and services that are furnished in such areas on or after January 1, 2015, and before the date on which the Secretary implements the market pricing program under section 1847C, the payment basis under this subsection for such supplies shall be further
reduced by 10 percent after taking into account the reduction effected under the preceding sentence.

“(B)(i) In the case of items and services described in paragraph (2)(D) that are included in the market pricing program under section 1847C, the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program.

“(ii) The Secretary may use information on the payment determined under such market pricing program to adjust the payment amount otherwise applicable under clause (i) for an area that is not a market pricing area under section 1847C, and in the case of such adjustment, paragraphs (8) and (9) of subsection (b) shall not be applied.”.

(2) Treatment of Suppliers in Competitive Acquisition Program Areas.—Section 1847(b)(4) of the Social Security Act (42 U.S.C. 1395w–3(b)(4)) is amended—

(A) in subparagraph (A)—

(i) in the first sentence, by striking “The Secretary may limit” and inserting “Until December 31, 2013, the Secretary may limit”; and
(ii) by inserting after the first sentence the following: “The preceding sentence shall not apply to items and services furnished in an eligible auction area (within the meaning of subsection (a)(4) of section 1847C) on or after the date of the implementation of the market pricing program under such section.”; and

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

“(C) Non-contracted Suppliers in Market Pricing Program.—The Secretary also shall award contracts to any supplier that meets eligibility requirements under this title for the furnishing of such items and services so long as the supplier accepts the price established under such program as payment in full for such items and services.”.

(3) Payment for Off-the-Shelf Orthotics.—Section 1834(h)(1) of the Social Security Act (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 January 1, 2014, in an eligible auction 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) the Secretary may 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 that is not an eligible auction area under section 1847C, and in the case of such adjustment, paragraphs (8) and (9) of section 1842(b) shall not be applied.”.

(b) POLICY AFTER IMPLEMENTATION OF THE MARKET PRICING PROGRAM.—

(1) IN GENERAL.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)), as amended by subsection (a)(1)(B), is amended by adding at the end the following new subparagraph:
“(II) APPLICATION OF MARKET PRICING PROGRAM; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—

“(i) IN GENERAL.—In the case of market priced items and services described in section 1847C(b)(1) furnished on or after the date of implementation of a market pricing program for which a price has been established under the program conducted in an eligible auction area under section 1847C, the payment basis under this subsection—

“(I) in the eligible auction area shall be the amount determined under the auction conducted in such eligible auction area for such items and services; or

“(II) in another eligible auction area shall be the amount determined under subclause (I) adjusted by the appropriate factor described in section 1847C(d)(7)(B)(iv).

“(ii) NO ADJUSTMENT IN PAYMENT AMOUNT DURING INITIAL TWO-YEAR PERIOD OF PRICING PROGRAM.—During the
term of any contract awarded pursuant to section 1847C(d)(6) for an item and service described in clause (i), the Secretary may not adjust the payment basis established under such clause to take into account the effects of a later-conducted auction during that two-year contract period. The Secretary may, at the termination of a contract awarded under section 1847C(d)(6) for such an item or service, adjust such payment basis to take into account the effects of a later-conducted auction.

“(iii) MARKET PRICING IN RURAL AND NON-COMPETITIVE AREAS.—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).
“(iv) 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.”.

(2) REGULATORY AUTHORITY.—Section 1834(a)(1)(G) of the Social Security Act (42 U.S.C. 1395w–3(a)(1)(G)) is amended—

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

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

(C) by inserting “or eligible auction areas in which an auction has been conducted, after June 30, 2013,” after “competitive acquisition areas”.
SEC. 4. ESTABLISHMENT OF DMEPOS MARKET PRICING PROGRAM.

(a) IN GENERAL.—Part B of title XVIII of the Social Security Act is amended by inserting after section 1847B (42 U.S.C. 1395w–3b) 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 auction areas (as defined in paragraph (4)) throughout the United States for the furnishing 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 auction areas, auction design, establishing of clearing prices, and conduct of auctions, 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 subsection (g)(1)."
“(3) IMPLEMENTATION.—The market pricing program shall be implemented in all eligible auction areas so that market pricing occurs nationwide in the first year of implementation consistent with the following:

“(A) FIRST YEAR OF IMPLEMENTATION.—

In the first year of implementation—

“(i) auctions under the program shall be held in at least 20 percent of eligible auction areas;

“(ii) prices in these areas will be set by such auctions;

“(iii) in each eligible auction area 2 categories of items shall be selected for auction;

“(iv) prices for categories not selected for auction in the area shall be set by reference to auctions held for those categories in econometrically similar areas; and

“(v) in those areas in which no auctions are held, prices for all categories will be set by reference to auctions held for those categories in econometrically similar areas.
“(B) Second year of implementation.—In the second year of implementation—

“(i) auctions shall be held in other eligible auction areas that include 10 percent of eligible auction areas; and

“(ii) prices in those areas in which no auctions are held or for categories in which an auction is not held, shall be set in the same manner as under subparagraph (A).

“(C) Subsequent years.—In each subsequent year of implementation—

“(i) auctions shall be held in an additional 10 percent of eligible auction areas, selected by the Secretary annually on an ongoing and rotating basis, until all eligible auction areas have been covered; and

“(ii) prices in those areas in which no auctions are held or for categories in which an auction is not held, shall be set in the same manner as under subparagraph (A).

“(D) Once the market pricing program is applied throughout the United States under subparagraph (C), the Secretary shall conduct auctions for different eligible auction areas throughout the United States on an ongoing
and rotating basis covering 10 percent of eligible auction 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 AUCTION AREAS.—

“(A) IN GENERAL.—In this section and section 1834, the term ‘eligible auction areas’ means counties, aggregations of counties, or parts of counties, not excluded under subparagraph (D), as established by the Secretary.

“(B) MARKET AREAS MUST REFLECT ECONOMIC INTERDEPENDENCY.—In determining and selecting eligible auction areas, the Secretary shall choose, from among counties, aggregations of counties, or parts of counties, auction 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 to take into account population and geographic size in establishing auction
areas in order to comply with this subparagraph.

“(C) Selection of Auction Areas.—In selecting auction areas in which an auction will be conducted under this section, the Secretary shall ensure that several auction areas of each econometric model are chosen.

“(D) Exclusion of Certain Auction Areas.—The Secretary shall not subject areas described in clause (iii) of section 1847(a)(1)(D) to market program reimbursement rates before the year specified in such clause.

“(5) Application of Certain Policies Applicable to Competitive Acquisition Programs.—The following provisions of subsection (a)(1) of section 1847 shall apply to the market pricing program in the same manner as they apply to competitive acquisition programs 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 auction prices and single payment amounts for items and services in eligible auction 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 feedback on missing financial documentation), except 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 Defined.—

“(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 related 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) furnished on or after July 1, 2013.
“(L) External infusion pumps and supplies.
“(M) Other items and services (other than those items and services specified in paragraph (2)) that could have been subject to participation in competitive acquisition programs under section 1847(a)(1).
“(2) EXCLUDED ITEMS.—Such term does not include the following:
“(A) An adjustable skin protection cushion used in connection with a wheelchair.
“(B) A complex rehabilitative power wheelchair and related accessories.
“(C) A manual wheelchair billed using current HCPCS Codes K0005 or E1161, and related accessories for such a wheelchair.


“(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 auction areas no later than 14 months after the date of entering into the contract with the auction expert under subsection (g)(1).

“(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, in-
cluding through the auction plan conference and other outreach efforts.

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

“(B) DRAFT AUCTION DESIGN.—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 that shall propose auction areas nationwide, lead products for each product category, and the price index associated with each lead product, and proposed rules for the conduct of auctions.

“(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 Secretary shall convene a design con-
ference (in this paragraph referred to as the ‘design conference’) for the auction process under this section. The auction expert shall chair the conference.

“(ii) PARTICIPANTS.—The participants at the design conference shall include at least the following:

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

“(II) BENEFICIARIES.—Representatives of individuals entitled to benefits under this part.

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

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

“(iii) PURPOSE OF CONFERENCE.—The purpose of the design conference shall be to review the auction design developed by the auction expert under subparagraph
(B) for the establishment of an efficient auction consistent with best practices and actuarial science.

“(iv) ELEMENTS OF CONFERENCE.—
With respect to the design conference—

“(I) the auction expert shall provide a demonstration of the preliminary auction design;

“(II) the auction expert shall lead a mock auction based upon such design in which the attendees will participate and offer comments and suggestions for improvement;

“(III) the auction expert may establish working committees on major issues; and

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

“(D) RECOMMENDATIONS.—

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

“(ii) Final Design Recommendation.—Not later than 3 months after the last day of the design conference, the auction expert shall submit to the Secretary final recommendations on the auction design for approval for expedited rulemaking. In this clause, the term ‘expedited rulemaking process’ means a process of publication of the proposed auction design and solicitation of public comments on such design. The provisions of section 1871(b)(1) shall not apply to such process.

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

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

“(B) do not result in a diminution of access 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 14 months after the date a contract is first entered into with an auction expert under subsection (g), the Secretary shall conduct auctions (each in this section referred to as a ‘market-priced auction’) among entities supplying market priced items and services in eligible auction areas that are selected in the auction design and consistent with subsection (a)(3). Each auction shall conclude no later than 2 months after its commencement. Market-based auctions shall be conducted in accordance with an auction design developed under subsection (c).

“(2) Items and Services Subject to Auction.—

“(A) In General.—In each eligible auction area in which a market-priced auction is conducted, the Secretary shall select to be subject to auction a combination of 2 categories of 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 auction areas. The Secretary shall ensure that each product category is auctioned in at least a sufficient number of eligible auction areas to produce a sample of bids based on the percentages 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 auction 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 let-
ter of credit from a financial institution ac-
ceptable to the Secretary instead of the
cash deposit otherwise required under
clause (i).

“(C) TREATMENT OF DEPOSITS SUB-
MITTED 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 winning bid at a market-
priced auction.

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

“(iii) DEPOSIT RETURN REQUIRE-
MENTS FOR PARTIALLY SUCCESSFUL SUP-
PLIERS.—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 pro-
vide for a proportionate return of any such
deposit.
“(4) Lead product selection for establishing clearing prices.—

“(A) In general.—For each product category of items and services specified in subsection (b)(1) that is the subject of a market-priced auction, the Secretary shall establish a lead product. Such lead product shall be selected based upon the price 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 the 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, which percentage of the clearing price, established by the auction expert in the plan design and adjusted after input from providers at the design plan conference, establishes the price of each item and service in the category.

“(iii) Establishing clearing price for items and services.—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 that will meet capacity targets in the eligible auction area for such item and service.

“(5) Conduct of auction.—

“(A) In general.—The Secretary shall conduct the market-priced auctions consistent with the provisions of this paragraph.

“(B) 3 months before auction date.—Approximately 3 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 the following:

“(i) Financial and other qualification
requirements for bidders.

“(ii) Algorithms for determining win-
ners and prices as a function of bids.

“(iii) Performance obligations of con-
tact suppliers, guarantees, and penalties
for non-conformance.

“(iv) The product categories to be se-
lected (and their related healthcare com-
mon procedure coding system codes) from
within the market priced items and serv-
ices.

“(v) The lead product for each prod-
uct category selected under paragraph
(4)(A) and the price grid for such cat-
egory.

“(vi) The eligible auction areas na-
tionwide (and areas identified as having
the same econometric model) and those eli-
gible auction areas in which a market-
priced auction will be conducted each year.
“(C) 30 DAYS BEFORE AUCTION DATE.—

Thirty days before a scheduled auction date, the Secretary shall review all applicants and identify the qualified suppliers eligible to submit bids. In carrying out this subparagraph, the Secretary shall specify the following:

“(i) The historic capacity for each eligible bidder for each category that will be subject to the auction.

“(ii) Bidder eligibility by eligible auction area.

“(iii) For each auction area, the lead product established under paragraph (4)(A).

“(iv) The price index (described in subsection (c)(2)(B)) in each auction area.

“(D) BIDDERS CONFERENCE.—Prior to conducting each such auction, the auction expert shall conduct a conference of prospective bidders in eligible auction areas in which an auction will be conducted.

“(E) DURING AUCTION.—During the conduct of the auction, the Secretary shall announce the following:
“(i) The time of the end of the round of auctioning.

“(ii) The history of prior rounds including the aggregate supply at the end of the round price for each product category by round.

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

“(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 that has participated in the auction, its own supply for all prices (from the initial starting price to the end of round price) for each item and service that is the subject of the auction.

“(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 the following:
“(i) A list of winning suppliers.

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

“(H) FINAL ACTIONS.—Not later than 30 days after the end of the final auction round, the Secretary shall adjust the performance guarantees received from each bidder to reflect the outcome of the auction in accordance with paragraph (3)(B).

“(6) CONDITIONS OF AWARDING CONTRACT.—

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

“(B) TERMS OF CONTRACT.—

“(i) MANDATORY ACCEPTANCE OF CONTRACT.—A supplier that submits a bid at or 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.

“(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 auction area beyond the level of demand for such item or service in the eligible auction 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.—

“(i) IN GENERAL.—The Secretary shall identify the capacity of each supplier
that applies to participate in an auction
under this section. A supplier’s capacity
shall be based upon the capacity of the
supplier in the preceding year in the auc-
tion area.

“(ii) New Suppliers.—Each bidding
supplier that has no historic capacity in
the auction area shall be assigned a base
capacity for each produce category made
available under the auction of 1 percent of
the total dollar value of that item or serv-
ence made available in the eligible auction
area.

“(7) Payment Amount Shall Equal Auction
Clearing Price.—

“(A) In general.—With respect to mar-
ket priced items or services that are provided in
an eligible auction area in which—

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

“(ii) such an auction is not conducted,
the auction price determined at an auction
for those items that is conducted in an-
other eligible auction area, as adjusted by the factor described in subparagraph (B)(iv), if appropriate, 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 auction area and that is a winning bidder in that eligible auction area shall be eligible to receive a contract under paragraph (6)(A) in such auction area.

“(ii) Supplying items in economically equivalent markets.—A supplier of a market priced item or service that is not a winning bidder in the eligible auction 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 auction area but that was the subject of a market-priced auction in an-
other econometrically similar eligible auction 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 auction area for a market priced item or service.

“(iv) Appropriate adjustments.—The Secretary shall develop an adjustment factor to reflect economic differences between the auction area that was the subject of the market-priced auction for the item or service and the auction 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 factors.

“(8) Monitor access and quality.—

“(A) In general.—The Secretary shall monitor the performance of suppliers that are awarded a contract pursuant to paragraph (6)
to ensure compliance with the requirements of this subsection, including the requirements and obligations established by the auction expert under paragraph (5)(B).

“(B) ENFORCEMENT.—If the Secretary, after consultation with the market monitor, determines that there has been a material failure of a supplier that has been awarded a contract pursuant to paragraph (6) to comply with such requirements, the Secretary, after consultation with the market monitor, shall implement enforcement measures. Such enforcement measures may include the following:

“(i) A formal warning letter.

“(ii) Forfeiture of amounts submitted as a performance deposit pursuant to subsection (d)(3)(B).

“(iii) Termination of a contract awarded under paragraph (6).

“(iv) Termination of the supplier’s agreement to participate in the program under this title for up to 2 years.

“(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 (7) shall not apply.

“(5) Paragraph (8) shall apply.

“(6) Paragraph (9) shall apply, except that such paragraph shall be applied as if a reference to a bidding program includes a reference to the market pricing program.
“(7) Paragraph (10) shall apply, except that such paragraph shall be applied as if a reference to a competitive acquisition program includes a reference to the market pricing program.

“(8) 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 judicial review of any claim to enjoin the operation of a market-priced auction conducted.

“(f) TRANSPARENCY REQUIREMENTS FOR MARKET PRICING PROGRAM.—In implementing the market pricing program, the Secretary shall provide for publication, on an Internet Web site operated by the Secretary, of the following information:

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

“(2) The financial requirements that are applicable for purposes of subsection (d)(3)(B).

“(3) The quality standards and the performance standards developed pursuant to subsection (e)(3)(B).
“(4) The calculation of the total market capacity of an eligible auction area for purposes of subsection (d)(5)(C)(i).

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

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

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

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

“(B) the number of winning and losing bidders at the auction; and

“(C) 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 of review or appeal to a rejected bidder.

“(8) 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).

“(g) RELIANCE ON AUCTION EXPERT AND MARKET MONITOR IN ESTABLISHING AND OPERATING MARKET
1 Pricing Program; Advisory Committee Report and
2 Monitoring.—
3
4 “(1) Auction expert and market mon-
5 itor.—
6
7 “(A) In general.—The Secretary shall,
8 not later than 3 months after the date of the
9 enactment of this section, through the Office of
10 the Assistant Secretary for Planning and Eval-
11 uation, enter into a contract with an individual
12 to serve as the auction expert and such a con-
13 tract to serve as a market monitor to assist in
14 the design, development, implementation and
15 functioning of the auction to be conducted pur-
16 suant to subsection (b). The auction expert and
17 market monitor shall report and be accountable
18 to the Secretary.
19
20 “(B) Selection of auction expert
21 and market monitor; term; access to in-
22 formation.—
23
24 “(i) Competitive process.—The se-
25 lection of the individual to serve as the
26 auction expert and as a market monitor
27 under subparagraph (A) shall be under-
28 taken through a competitive process.
“(ii) DISQUALIFICATIONS.—An individual may not be selected as the auction expert if such individual—

“(I) is a current or former employee of the Centers for Medicare & Medicaid Services;

“(II) 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);

“(III) does not have significant experience in implementing auctions of similar complexity in government programs; and

“(IV) does not have appropriate educational credentials.

“(iii) ACCESS TO INFORMATION.—The Secretary shall make available to the auction expert and the market monitor all applicable information (including confidential information) on the relevant markets throughout the duration of the market pricing program.
“(iv) **Term of Contract.**—The contract for the auction expert and for the market monitor under this paragraph shall be for a period of 4 years.

“(2) **Functions of Auction Expert.**—The auction expert shall conduct the activities as described in this section, including—

“(A) development of a draft auction design and design conference under subparagraphs (B) and (C) of subsection (c)(2);

“(B) conducting bidders conferences under subsection (d)(5)(D); and

“(C) lead the auction, contracting, and other aspects of implementing the market pricing program with the advice of the market monitor.

“(3) **Functions of Market Monitor.**—

“(A) **Participate in design conference.**—The market monitor shall participate in the design conference under subsection (c)(2)(C) and, at the conference, provide a presentation on the responsibilities of the market monitor throughout the year and common on key aspects of the design and their purpose.
“(B) 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.

“(C) MONITORING.—

“(i) IN GENERAL.—The market monitor shall provide ongoing monitoring of the performance of suppliers and the effects of the market pricing program to guard against the occurrence of any negative effects specified in subsection (d)(8).

“(ii) PROVIDE TRANSPARENCY OF INFORMATION.—The monitoring under clause (i) shall include public availability of the number of suppliers providing market priced items and services in an eligible auction area during each year of the operation of the market pricing program.

“(D) BIANNUAL REPORTS TO SECRETARY.—The market monitor shall provide biannual reports to the Secretary in the initial two years and annually thereafter on the devel-
opment and operations of the market pricing
program. In each report, the monitor shall—

“(i) identify potential problems with
the program; and

“(ii) recommend solutions to problems
so identified.

“(E) ANNUAL REPORT.—The market mon-
itor 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 pro-
gram;

“(ii) recommended solutions to prob-
lems identified pursuant to subclause (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 result-
ing 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 or prolonged hospitalizations due to lack of timely access to market priced items and services; and

“(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.”.

SEC. 5. APPLICATION OF EXISTING PROVISIONS.

(a) Revisions to Program Advisory and Oversight Committee.—Section 1847(c) of the Social Security Act (42 U.S.C. 1395w–3(c)) is amended—

(1) in paragraph (1), by adding at the end the following: “The Secretary shall reconstitute the Committee and extend the terms of its members.”;

(2) in paragraph (3), by adding at the end the following new subparagraph:

“(C) Additional report to Congress.—Not later than 1 year after the date of the appointment of the auction expert under section 1847C(g)(1), the Committee shall sub-
mit to the Congress a report on the market pricing program established under section 1847C. The report shall include information on the design of the market pricing program, access to and quality of market priced items and services by beneficiaries under the program.”;

(3) by striking paragraph (4) (relating to FACA); and

(4) in paragraph (5), by inserting before the period at the end the following: “, except that the reconstituted Committee shall terminate 2 years after the date of the appointment of the auction expert and the market monitor under section 1847C(g)(1)”.

(b) 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 4), 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, 42 U.S.C. 1395w–3(a)(1)(D)(i)(IV)).
SEC. 6. ADDITIONAL BUDGETARY OFFSET.

(a) IN GENERAL.—In addition to the payment reductions specified in the amendments made by section 3(a)(1), unobligated balances of all discretionary appropriations for each fiscal year (beginning with fiscal year 2013) are hereby rescinded in an amount equal to the amount necessary to make this Act budget neutral for such fiscal year.

(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall determine and identify each account, program, project, and activity to which the rescission under subsection (a) shall apply and the amount of such rescission that shall apply to each such account, program, project and activity. Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and to Congress of the accounts, programs, projects, activities, and amounts determined and identified for rescission under the preceding sentence.

(c) EXCEPTION.—This section shall not apply to accounts, programs, projects and activities operated by the Department of Defense or the Department of Veteran’s Affairs.