

113TH CONGRESS
1ST SESSION

H. R. 1717

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

APRIL 24, 2013

Mr. PRICE of Georgia (for himself, Mr. LARSON of Connecticut, Mr. THOMPSON of Pennsylvania, Mr. BRALEY of Iowa, Mr. ROE of Tennessee, Mr. RYAN of Ohio, Mr. TIBERI, Mr. LOEBSACK, Mr. JOYCE, Mr. MCKINLEY, Mrs. CAPITO, Mr. DESJARLAIS, Mrs. BLACKBURN, Mr. BARLETTA, Mr. GRIMM, Mr. AUSTIN SCOTT of Georgia, Mr. HARPER, Mr. MARINO, Mr. CRENSHAW, Mr. KING of New York, Mr. JOHNSON of Ohio, Mr. FORTENBERRY, Mr. CHABOT, Mr. POSEY, Mr. LANKFORD, and Mr. NUNNELEE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Appropriations, 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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. TERMINATION OF COMPETITIVE ACQUISITION PRO-**
5 **GRAM.**

6 Section 1847(a)(1) of the Social Security Act (42
7 U.S.C. 1395w–3(a)(1)) is amended—

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

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

13 (3) by adding at the end the following new sub-
14 paragraph:

15 “(G) **TERMINATION OF PROGRAM; TRANSI-**
16 **TION.—**

17 “(i) **NO ADDITIONAL COMPETITION**
18 **ROUNDS.—**Notwithstanding subparagraph
19 (B), the competition under this section
20 shall end on December 31, 2013, with
21 round 1. The Secretary shall take no fur-
22 ther action to implement round 2 of the
23 competitive acquisition program, the na-
24 tional mail order competitive acquisition
25 program, or any subsequent round of the

1 competitive acquisition program under this
2 section.

3 “(ii) CONTRACT TERMINATION.—The
4 contracts awarded under this section be-
5 fore the date of the enactment of this sub-
6 paragraph shall terminate on July 1, 2013,
7 and no payment shall be made under this
8 title after such date based on such a con-
9 tract. To the extent that any damages may
10 be applicable as a result of the termination
11 of such contracts, such damages shall be
12 payable from the Federal Supplementary
13 Medical Insurance Trust Fund under sec-
14 tion 1841. Nothing in this clause shall be
15 construed to provide an independent cause
16 of action or right to administrative or judi-
17 cial review with regard to the termination
18 provided under this clause.”.

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

21 (a) TRANSITIONAL PAYMENT RULES.—

22 (1) PAYMENT FOR DURABLE MEDICAL EQUIP-
23 MENT.—

1 (A) IN GENERAL.—Section 1834(a)(1) of
2 the Social Security Act (42 U.S.C.
3 1395m(a)(1)) is amended—

4 (i) in subparagraph (F)(i)—

5 (I) by inserting “and before July
6 1, 2013,” after “January 1, 2011,”;

7 (II) by striking “, subject to sub-
8 paragraphs (G) and (H),”; and

9 (III) by adding “and” at the end;

10 (ii) in subparagraph (F)(ii)—

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

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

17 (iii) by striking clause (iii) of subpara-
18 graph (F);

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

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

23 “(G) PAYMENT RATES IN ROUND 1 AREAS
24 DURING TRANSITION.—

1 “(i) IN GENERAL.—In the case of cov-
2 ered items and services that are furnished
3 in an area that had been designated by the
4 Secretary as a competitive acquisition pro-
5 gram under section 1847(a)(1)(B)(i)(I) on
6 or after the date on which contracts for
7 the furnishing of such covered items and
8 services expire, the payment basis under
9 this subsection for such items and services
10 furnished in such area shall be the amount
11 described in clause (ii) or (iii), as the case
12 may be.

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

16 “(I) IN GENERAL.—In the case
17 of covered items that were selected to
18 be furnished in the competitive acqui-
19 sition program (excluding diabetic
20 supplies) in a competitive acquisition
21 area selected pursuant to section
22 1847(a)(1)(B)(i)(II) on or after July
23 1, 2013, and before the date on which
24 the Secretary implements the market
25 pricing program under section 1847C,

1 subject to subclause (II), the payment
2 basis under this subsection for such
3 items and services furnished in such
4 areas shall be 95 percent of the
5 amount established under this sub-
6 section.

7 “(II) FURTHER REDUCTIONS IN
8 2014 AND 2015.—In the case of covered
9 items described in subclause (I) that
10 are furnished during 2014, the pay-
11 ment basis under this subsection for
12 such items furnished in such areas
13 shall be reduced by 10 percent from
14 the amount described in such sub-
15 clause. In the case of such items and
16 services that are furnished in such
17 areas on or after January 1, 2015,
18 and before the date on which the Sec-
19 retary implements the market pricing
20 program under section 1847C, the
21 payment basis under this subsection
22 for such items and services shall be
23 further reduced by 10 percent after
24 taking into account the reduction ef-
25 fected under the preceding sentence.

1 “(iii) PAYMENT RATES FOR DIABETIC
2 SUPPLIES.—

3 “(I) IN GENERAL.—In the case
4 of all diabetic testing supplies, mail
5 order and non-mail order (HCPCS
6 Codes A4233, A4234, A4235, A4236,
7 A4253, A4256, A4258, and A4259,
8 including the KL modifier), effective
9 July 1, 2013, and before the date on
10 which the Secretary implements the
11 market pricing program under section
12 1847C and subject to subclause (II),
13 the payment basis under this sub-
14 section for such supplies shall be 90
15 percent of the amount otherwise es-
16 tablished under this subsection.

17 “(II) FURTHER REDUCTIONS IN
18 2014 AND 2015.—In the case of sup-
19 plies described in subclause (I) that
20 are furnished during 2014, the pay-
21 ment basis under this subsection for
22 such items furnished in such areas
23 shall be reduced by 15 percent from
24 the amount described in such sub-
25 clause. In the case of such supplies

1 that are furnished in such areas on or
 2 after January 1, 2015, and before the
 3 date on which the Secretary imple-
 4 ments the market pricing program
 5 under section 1847C, the payment
 6 basis under this subsection for such
 7 supplies shall be further reduced by
 8 15 percent after taking into account
 9 the reduction effected under the pre-
 10 ceding sentence.”.

11 (B) CONFORMING AMENDMENTS.—Section
 12 1842(s) of the Social Security Act (42 U.S.C.
 13 1395u(s)) is amended—

14 (i) in paragraph (3), in the matter
 15 preceding subparagraph (A), by inserting
 16 “and that are furnished in such an area on
 17 or before July 1, 2013” after “section
 18 1847(a)”;

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

21 “(4)(A)(i) In the case of items and services described
 22 in paragraph (2)(D) that are furnished in an area that
 23 had been designated by the Secretary as a competitive ac-
 24 quisition area under section 1847(a)(1)(B)(i)(I) on or
 25 after the date on which contracts for the furnishing of

1 such covered items and services expire, the payment basis
2 under this subsection for such items and services fur-
3 nished in such area shall be the amounts described in
4 clause (ii).

5 “(ii)(I) In the case of items and services described
6 in paragraph (2)(D) that were selected to be furnished in
7 the competitive acquisition program in a competitive ac-
8 quisition area selected pursuant to section
9 1847(a)(1)(B)(i)(II) on or after July 1, 2013, and before
10 the date on which the Secretary implements the market
11 pricing program under section 1847C, subject to subclause
12 (II), the payment basis under this subsection for such
13 items and services furnished in such areas shall be 95 per-
14 cent of the amount otherwise established under this sub-
15 section.

16 “(II) In the case of covered items and services de-
17 scribed in subclause (I) that are furnished during 2014,
18 the payment basis under this subsection for such items
19 and services furnished in such areas shall be reduced by
20 10 percent from the amount described in such subclause.
21 In the case of such items and services that are furnished
22 in such areas on or after January 1, 2015, and before
23 the date on which the Secretary implements the market
24 pricing program under section 1847C, the payment basis
25 under this subsection for such supplies shall be further

1 reduced by 10 percent after taking into account the reduc-
 2 tion effected under the preceding sentence.

3 “(B)(i) In the case of items and services described
 4 in paragraph (2)(D) that are included in the market pric-
 5 ing program under section 1847C, the payment basis
 6 under this subsection for such items and services fur-
 7 nished in such area shall be the payment basis determined
 8 under such competitive acquisition program.

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

16 (2) TREATMENT OF SUPPLIERS IN COMPETI-
 17 TIVE ACQUISITION PROGRAM AREAS.—Section
 18 1847(b)(4) of the Social Security Act (42 U.S.C.
 19 1395w–3(b)(4)) is amended—

20 (A) in subparagraph (A)—

21 (i) in the first sentence, by striking
 22 “The Secretary may limit” and inserting
 23 “Until December 31, 2013, the Secretary
 24 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

1 orthotics described in subsection (b)(1)(K) of
 2 section 1847C furnished on or after January 1,
 3 2014, in an eligible auction area, that are in-
 4 cluded in a market pricing program under such
 5 section—

6 “(i) the payment basis under this sub-
 7 section for such orthotics furnished in such
 8 area shall be the payment basis determined
 9 under such market pricing program; and

10 “(ii) the Secretary may use informa-
 11 tion on the payment determined under
 12 such market pricing program to adjust the
 13 payment amount otherwise recognized
 14 under subparagraph (B)(ii) for an area
 15 that is not an eligible auction area under
 16 section 1847C, and in the case of such ad-
 17 justment, paragraphs (8) and (9) of sec-
 18 tion 1842(b) shall not be applied.”.

19 (b) POLICY AFTER IMPLEMENTATION OF THE MAR-
 20 KET PRICING PROGRAM.—

21 (1) IN GENERAL.—Section 1834(a)(1) of the
 22 Social Security Act (42 U.S.C. 1395m(a)(1)), as
 23 amended by subsection (a)(1)(B), is amended by
 24 adding at the end the following new subparagraph:

1 “(H) APPLICATION OF MARKET PRICING
2 PROGRAM; LIMITATION OF INHERENT REASON-
3 ABLENESS AUTHORITY.—

4 “(i) IN GENERAL.—In the case of
5 market priced items and services described
6 in section 1847C(b)(1) furnished on or
7 after the date of implementation of a mar-
8 ket pricing program for which a price has
9 been established under the program con-
10 ducted in an eligible auction area under
11 section 1847C, the payment basis under
12 this subsection—

13 “(I) in the eligible auction area
14 shall be the amount determined under
15 the auction conducted in such eligible
16 auction area for such items and serv-
17 ices; or

18 “(II) in another eligible auction
19 area shall be the amount determined
20 under subclause (I) adjusted by the
21 appropriate factor described in section
22 1847C(d)(7)(B)(iv).

23 “(ii) NO ADJUSTMENT IN PAYMENT
24 AMOUNT DURING INITIAL TWO-YEAR PE-
25 RIOD OF PRICING PROGRAM.—During the

1 term of any contract awarded pursuant to
2 section 1847C(d)(6) for an item and serv-
3 ice described in clause (i), the Secretary
4 may not adjust the payment basis estab-
5 lished under such clause to take into ac-
6 count the effects of a later-conducted auc-
7 tion during that two-year contract period.
8 The Secretary may, at the termination of
9 a contract awarded under section
10 1847C(d)(6) for such an item or service,
11 adjust such payment basis to take into ac-
12 count the effects of a later-conducted auc-
13 tion.

14 “(iii) MARKET PRICING IN RURAL AND
15 NON-COMPETITIVE AREAS.—The Secretary,
16 after consultation with the auction expert
17 under section 1847C, may (and, in the
18 case of covered items furnished on or after
19 January 1, 2016, shall) use information on
20 the payment determined under such mar-
21 ket pricing program to adjust the payment
22 amount otherwise recognized under sub-
23 paragraph (B)(ii) for an area in which an
24 auction has not been conducted pursuant
25 to section 1847C(a).

1 “(iv) CONTINUED USE OF ADDI-
2 TIONAL INFORMATION.—In the case of cov-
3 ered items furnished on or after January
4 1, 2016, the Secretary shall continue to
5 make such adjustments described in clause
6 (ii) as, under such market pricing pro-
7 gram, additional covered items are phased
8 in or information is updated as contracts
9 are renewed under such program.”.

10 (2) REGULATORY AUTHORITY.—Section
11 1834(a)(1)(G) of the Social Security Act (42 U.S.C.
12 1395w-3(a)(1)(G)) is amended—

13 (A) in the subparagraph heading, by in-
14 serting “OR MARKET PRICING” before “RATES”;

15 (B) by striking “subparagraph (F)(ii)”
16 and inserting “subparagraph (F)(ii), subpara-
17 graph (H)(iii),”; and

18 (C) by inserting “or eligible auction areas
19 in which an auction has been conducted, after
20 June 30, 2013,” after “competitive acquisition
21 areas”.

1 **SEC. 4. ESTABLISHMENT OF DMEPOS MARKET PRICING**
2 **PROGRAM.**

3 (a) IN GENERAL.—Part B of title XVIII of the Social
4 Security Act is amended by inserting after section 1847B
5 (42 U.S.C. 1395w–3b) the following new section:

6 “DMEPOS MARKET PRICING PROGRAM

7 “SEC. 1847C. (a) ESTABLISHMENT.—

8 “(1) IN GENERAL.—The Secretary shall estab-
9 lish and implement a market pricing program (in
10 this section referred to as ‘market pricing program’)
11 under which auctions are conducted in eligible auc-
12 tion areas (as defined in paragraph (4)) throughout
13 the United States for the furnishing of market
14 priced items and services (as defined in subsection
15 (b)) for which payment is made under this part.

16 “(2) ROLES OF AUCTION EXPERT AND MARKET
17 MONITOR.—The elements of the market pricing pro-
18 gram, including eligible auction areas, auction de-
19 sign, establishing of clearing prices, and conduct of
20 auctions, shall be established and operated in con-
21 sultation with, and after input and review by, the
22 auction expert and the market monitor under sub-
23 section (g). In this section, the terms ‘auction ex-
24 pert’ and ‘market monitor’ refer to the respective
25 auction expert and market monitor contracted with
26 under subsection (g)(1).

1 “(3) IMPLEMENTATION.—The market pricing
2 program shall be implemented in all eligible auction
3 areas so that market pricing occurs nationwide in
4 the first year of implementation consistent with the
5 following:

6 “(A) FIRST YEAR OF IMPLEMENTATION.—

7 In the first year of implementation—

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

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

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

16 “(iv) prices for categories not selected
17 for auction in the area shall be set by ref-
18 erence to auctions held for those categories
19 in econometrically similar areas; and

20 “(v) in those areas in which no auc-
21 tions are held, prices for all categories will
22 be set by reference to auctions held for
23 those categories in econometrically similar
24 areas.

1 “(B) SECOND YEAR OF IMPLEMENTA-
2 TION.—In the second year of implementation—

3 “(i) auctions shall be held in other eli-
4 gible auction areas that include 10 percent
5 of eligible auction areas; and

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

10 “(C) SUBSEQUENT YEARS.—In each subse-
11 quent year of implementation—

12 “(i) auctions shall be held in an addi-
13 tional 10 percent of eligible auction areas,
14 selected by the Secretary annually on an
15 ongoing and rotating basis, until all eligi-
16 ble auction areas have been covered; and

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

21 “(D) Once the market pricing program is
22 applied throughout the United States under
23 subparagraph (C), the Secretary shall conduct
24 auctions for different eligible auction areas
25 throughout the United States on an ongoing

1 and rotating basis covering 10 percent of eligi-
2 ble auction areas no later than March for each
3 subsequent year.

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

9 “(4) ELIGIBLE AUCTION AREAS.—

10 “(A) IN GENERAL.—In this section and
11 section 1834, the term ‘eligible auction areas’
12 means counties, aggregations of counties, or
13 parts of counties, not excluded under subpara-
14 graph (D), as established by the Secretary.

15 “(B) MARKET AREAS MUST REFLECT ECO-
16 NOMIC INTERDEPENDENCY.—In determining
17 and selecting eligible auction areas, the Sec-
18 retary shall choose, from among counties, ag-
19 gregations of counties, or parts of counties,
20 auction areas that form an economically inter-
21 dependent area reflecting standard econometric
22 market models. Nothing in this subparagraph
23 shall preclude the Secretary from subdividing a
24 large county to take into account population
25 and geographic size in establishing auction

1 areas in order to comply with this subpara-
2 graph.

3 “(C) SELECTION OF AUCTION AREAS.—In
4 selecting auction areas in which an auction will
5 be conducted under this section, the Secretary
6 shall ensure that several auction areas of each
7 econometric model are chosen.

8 “(D) EXCLUSION OF CERTAIN AUCTION
9 AREAS.—The Secretary shall not subject areas
10 described in clause (iii) of section
11 1847(a)(1)(D) to market program reimburse-
12 ment rates before the year specified in such
13 clause.

14 “(5) APPLICATION OF CERTAIN POLICIES AP-
15 PPLICABLE TO COMPETITIVE ACQUISITION PRO-
16 GRAMS.—The following provisions of subsection
17 (a)(1) of section 1847 shall apply to the market
18 pricing program in the same manner as they apply
19 to competitive acquisition programs under such sec-
20 tion except as otherwise provided:

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

23 “(B) Subparagraph (E) (relating to
24 verification by OIG), except that the assessment
25 shall be of market pricing and subsequent pric-

1 ing determinations that are the basis for auc-
2 tion prices and single payment amounts for
3 items and services in eligible auction areas and
4 shall be conducted in the first two years of the
5 market pricing program and may continue in
6 subsequent years of the program.

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

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

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

17 “(A) Oxygen supplies and equipment.

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

20 “(C) Manual wheelchairs.

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

23 “(E) Continuous positive airway pressure
24 devices, respiratory assistive devices, and re-
25 lated supplies.

1 “(F) Hospital beds and related accessories.

2 “(G) Walkers and related accessories.

3 “(H) Support services (Group 2 mattresses
4 and overlays).

5 “(I) Negative pressure wound therapy
6 pumps and related supplies and accessories.

7 “(J) Diabetic supplies.

8 “(K) Off-the-shelf orthotics described in
9 section 1847(a)(2)(C) furnished on or after
10 July 1, 2013.

11 “(L) External infusion pumps and sup-
12 plies.

13 “(M) Other items and services (other than
14 those items and services specified in paragraph
15 (2)) that could have been subject to participa-
16 tion in competitive acquisition programs under
17 section 1847(a)(1).

18 “(2) EXCLUDED ITEMS.—Such term does not
19 include the following:

20 “(A) An adjustable skin protection cushion
21 used in connection with a wheelchair.

22 “(B) A complex rehabilitative power wheel-
23 chair and related accessories.

1 “(C) A manual wheelchair billed using cur-
2 rent HCPCS Codes K0005 or E1161, and re-
3 lated accessories for such a wheelchair.

4 “(D) A medical device classified in class
5 III under the Federal Food, Drug, and Cos-
6 metic Act.

7 “(c) MARKET PRICING PROGRAM REQUIREMENTS.—

8 “(1) IN GENERAL.—The Secretary shall estab-
9 lish an auction design through the process described
10 in paragraph (2), that meets the requirements of
11 paragraph (3), and shall ensure that the first auc-
12 tion will be conducted for all eligible auction areas
13 no later than 14 months after the date of entering
14 into the contract with the auction expert under sub-
15 section (g)(1).

16 “(2) AUCTION PROCESS; INPUT OF STAKE-
17 HOLDERS; DESIGN.—

18 “(A) TRANSPARENT PROCESS RE-
19 QUIRED.—

20 “(i) IN GENERAL.—In establishing
21 such auction design, the Secretary shall
22 utilize an open and transparent process
23 that involves all relevant stakeholders (as
24 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

1 (B) for the establishment of an efficient
2 auction consistent with best practices and
3 actuarial science.

4 “(iv) ELEMENTS OF CONFERENCE.—

5 With respect to the design conference—

6 “(I) the auction expert shall pro-
7 vide a demonstration of the prelimi-
8 nary auction design;

9 “(II) the auction expert shall
10 lead a mock auction based upon such
11 design in which the attendees will par-
12 ticipate and offer comments and sug-
13 gestions for improvement;

14 “(III) the auction expert may es-
15 tablish working committees on major
16 issues; and

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

21 “(D) RECOMMENDATIONS.—

22 “(i) WORKING COMMITTEES.—Not
23 later than 2 months after the last day of
24 the design conference, each working com-
25 mittee established under subparagraph

1 (C)(iv)(III) shall submit to the auction ex-
2 pert the committee's recommendations on
3 the final design for auctions under this
4 section.

5 “(ii) FINAL DESIGN RECOMMENDA-
6 TION.—Not later than 3 months after the
7 last day of the design conference, the auc-
8 tion expert shall submit to the Secretary
9 final recommendations on the auction de-
10 sign for approval for expedited rulemaking.
11 In this clause, the term ‘expedited rule-
12 making process’ means a process of publi-
13 cation of the proposed auction design and
14 solicitation of public comments on such de-
15 sign. The provisions of section 1871(b)(1)
16 shall not apply to such process.

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

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

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

1 “(d) CONDUCT OF AUCTION.—

2 “(1) INITIAL AUCTION.—No later than 14
3 months after the date a contract is first entered into
4 with an auction expert under subsection (g), the
5 Secretary shall conduct auctions (each in this section
6 referred to as a ‘market-priced auction’) among enti-
7 ties supplying market priced items and services in
8 eligible auction areas that are selected in the auction
9 design and consistent with subsection (a)(3). Each
10 auction shall conclude no later than 2 months after
11 its commencement. Market-based auctions shall be
12 conducted in accordance with an auction design de-
13 veloped under subsection (c).

14 “(2) ITEMS AND SERVICES SUBJECT TO AUC-
15 TION.—

16 “(A) IN GENERAL.—In each eligible auc-
17 tion area in which a market-priced auction is
18 conducted, the Secretary shall select to be sub-
19 ject to auction a combination of 2 categories of
20 items and services from among the market
21 priced items and services.

22 “(B) ALL LISTED ITEMS AND SERVICES TO
23 BE SUBJECT TO AUCTION.—The Secretary shall
24 ensure in the market-priced auction that each
25 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-

1 ter of credit from a financial institution ac-
2 ceptable to the Secretary instead of the
3 cash deposit otherwise required under
4 clause (i).

5 “(C) TREATMENT OF DEPOSITS SUB-
6 MITTED BY SUPPLIERS.—

7 “(i) SUCCESSFUL BIDDERS.—The
8 Secretary shall retain as a performance
9 guarantee the deposit submitted under
10 subparagraph (B)(i) of a supplier that has
11 submitted a winning bid at a market-
12 priced auction.

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

17 “(iii) DEPOSIT RETURN REQUIRE-
18 MENTS FOR PARTIALLY SUCCESSFUL SUP-
19 PLIERS.—If a supplier submits a bid that
20 is accepted at the auction, but the supplier
21 is not awarded a contract for the full
22 amount of the bid, the Secretary shall pro-
23 vide for a proportionate return of any such
24 deposit.

1 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
2 LISHING CLEARING PRICES.—

3 “(A) IN GENERAL.—For each product cat-
4 egory of items and services specified in sub-
5 section (b)(1) that is the subject of a market-
6 priced auction, the Secretary shall establish a
7 lead product. Such lead product shall be se-
8 lected based upon the price and utilization of
9 the product under this part.

10 “(B) LEAD PRODUCT CLEARING PRICE ES-
11 TABLISHES CLEARING PRICE FOR OTHER PROD-
12 UCTS.—

13 “(i) LEAD PRODUCT AS REFERENCE
14 POINT FOR OTHER PRODUCTS.—The lead
15 product selected under subparagraph (A)
16 shall be used as a reference point for all
17 other products (categorized by the
18 healthcare common procedure coding sys-
19 tem code) in the same category as the lead
20 product. Such lead product shall be as-
21 signed a weight of 100 percent.

22 “(ii) ADDITIONAL PRODUCTS IN EACH
23 PRODUCT CATEGORY.—Every other prod-
24 uct in the same product category as the
25 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

1 rules that are consistent with the auction plan
2 developed under this section. These rules shall
3 include the following:

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

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

8 “(iii) Performance obligations of con-
9 tract suppliers, guarantees, and penalties
10 for non-conformance.

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

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

20 “(vi) The eligible auction areas na-
21 tionwide (and areas identified as having
22 the same econometric model) and those eli-
23 gible auction areas in which a market-
24 priced auction will be conducted each year.

1 “(C) 30 DAYS BEFORE AUCTION DATE.—

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

7 “(i) The historic capacity for each eli-
8 gible bidder for each category that will be
9 subject to the auction.

10 “(ii) Bidder eligibility by eligible auc-
11 tion area.

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

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

17 “(D) BIDDERS CONFERENCE.—Prior to
18 conducting each such auction, the auction ex-
19 pert shall conduct a conference of prospective
20 bidders in eligible auction areas in which an
21 auction will be conducted.

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

1 “(i) The time of the end of the round
2 of auctioning.

3 “(ii) The history of prior rounds in-
4 cluding the aggregate supply at the end of
5 the round price for each product category
6 by round.

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

11 “(i) The aggregate supply for each
12 item and service that is the subject of the
13 auction at the price established during the
14 auction.

15 “(ii) For each supplier that has par-
16 ticipated in the auction, its own supply for
17 all prices (from the initial starting price to
18 the end of round price) for each item and
19 service that is the subject of the auction.

20 “(iii) Revised schedule of rounds for
21 the next bidding day.

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

1 “(i) A list of winning suppliers.

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

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

11 “(6) CONDITIONS OF AWARDING CONTRACT.—

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

18 “(B) TERMS OF CONTRACT.—

19 “(i) MANDATORY ACCEPTANCE OF
20 CONTRACT.—A supplier that submits a bid
21 at or below such clearing price shall be
22 treated as having agreed to and accept the
23 contract awarded pursuant to subpara-
24 graph (A).

1 “(ii) CONTRACT TERMS.—A contract
2 awarded pursuant to subparagraph (A)
3 shall be valid for 2 years.

4 “(iii) NO REQUIREMENT TO SUPPLY
5 UP TO BID AMOUNT.—Nothing in this sub-
6 section shall require a supplier that is
7 awarded a contract pursuant to subpara-
8 graph (A) to supply a marked priced item
9 or service that is the subject of an auction
10 in the eligible auction area beyond the level
11 of demand for such item or service in the
12 eligible auction area, even if such level is
13 below the level that the supplier assumed
14 in its bid.

15 “(C) ENSURING ADEQUATE SELECTION OF
16 CONTRACTORS.—The Secretary may not award
17 a contract to any entity under the auction to
18 furnish such items or services unless the Sec-
19 retary finds that the conditions described in
20 section 1847(b)(2)(A) apply with respect to an
21 entity receiving a contract under this para-
22 graph.

23 “(D) SUFFICIENT CAPACITY.—

24 “(i) IN GENERAL.—The Secretary
25 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 auction 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 service made available in the eligible auction 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 auction area in which—

“(i) a market-priced auction is conducted, 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-

1 other eligible auction area, as adjusted by
2 the factor described in subparagraph
3 (B)(iv), if appropriate,
4 shall constitute the payment amount under sec-
5 tion 1834(a)(1)(H)(i)(I) or section 1842(s), as
6 the case may be.

7 “(B) SUPPLYING ITEMS OR SERVICES.—

8 “(i) IN GENERAL.—No entity other
9 than a supplier of a market priced item or
10 service that is the subject of a market-
11 priced auction in an eligible auction area
12 and that is a winning bidder in that eligi-
13 ble auction area shall be eligible to receive
14 a contract under paragraph (6)(A) in such
15 auction area.

16 “(ii) SUPPLYING ITEMS IN ECONOMI-
17 CALLY EQUIVALENT MARKETS.—A supplier
18 of a market priced item or service that is
19 not a winning bidder in the eligible auction
20 area described in clause (i) shall, subject to
21 clauses (iii) and (iv), be eligible to supply
22 any other market priced item or service
23 that was not the subject of an auction in
24 that eligible auction area but that was the
25 subject of a market-priced auction in an-

1 other econometrically similar eligible auc-
2 tion area (as determined by the Secretary).

3 “(iii) SUPPLIER MUST ACCEPT AUC-
4 TION PRICE.—Clause (ii) shall only apply
5 to a supplier that agrees to accept the
6 price determined at an auction in another
7 eligible auction area for a market priced
8 item or service.

9 “(iv) APPROPRIATE ADJUSTMENTS.—
10 The Secretary shall develop an adjustment
11 factor to reflect economic differences be-
12 tween the auction area that was the sub-
13 ject of the market-priced auction for the
14 item or service and the auction area in
15 which the supplier is located. The Sec-
16 retary shall use such adjustment factor to
17 adjust the payment amount made to a sup-
18 plier pursuant to clause (iii). The Sec-
19 retary, auction expert, and market monitor
20 shall consult with relevant stakeholders in
21 developing such factors.

22 “(8) MONITOR ACCESS AND QUALITY.—

23 “(A) IN GENERAL.—The Secretary shall
24 monitor the performance of suppliers that are
25 awarded a contract pursuant to paragraph (6)

1 to ensure compliance with the requirements of
2 this subsection, including the requirements and
3 obligations established by the auction expert
4 under paragraph (5)(B).

5 “(B) ENFORCEMENT.—If the Secretary,
6 after consultation with the market monitor, de-
7 termines that there has been a material failure
8 of a supplier that has been awarded a contract
9 pursuant to paragraph (6) to comply with such
10 requirements, the Secretary, after consultation
11 with the market monitor, shall implement en-
12 forcement measures. Such enforcement meas-
13 ures may include the following:

14 “(i) A formal warning letter.

15 “(ii) Forfeiture of amounts submitted
16 as a performance deposit pursuant to sub-
17 section (d)(3)(B).

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

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

23 “(e) APPLICATION OF COMPETITIVE ACQUISITION
24 PROGRAM PROVISIONS.—In implementing the market

1 pricing program under this section, the provisions of sec-
2 tion 1847(b) shall be applied as follows:

3 “(1) Paragraph (3) shall apply, except that, for
4 purposes of contracts awarded under the market
5 pricing program, subparagraph (B) of such para-
6 graph shall be applied by substituting ‘2 years’ for
7 ‘3 years’.

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

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

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

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

19 “(4) Paragraph (7) shall not apply.

20 “(5) Paragraph (8) shall apply.

21 “(6) Paragraph (9) shall apply, except that
22 such paragraph shall be applied as if a reference to
23 a bidding program includes a reference to the mar-
24 ket pricing program.

1 “(7) Paragraph (10) shall apply, except that
2 such paragraph shall be applied as if a reference to
3 a competitive acquisition program includes a ref-
4 erence to the market pricing program.

5 “(8) Paragraph (11) shall not apply, except
6 that—

7 “(A) the pendency of any claim for review
8 under this section shall not delay any auction
9 round conducted pursuant to subsection (a)(3)
10 or (d)(1); and

11 “(B) there shall be no administrative or ju-
12 dicial review of any claim to enjoin the oper-
13 ation of a market-priced auction conducted.

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

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

21 “(2) The financial requirements that are appli-
22 cable for purposes of subsection (d)(3)(B).

23 “(3) The quality standards and the perform-
24 ance standards developed pursuant to subsection
25 (c)(3)(B).

1 “(4) The calculation of the total market capac-
 2 ity of an eligible auction area for purposes of sub-
 3 section (d)(5)(C)(i).

4 “(5) The methodology developed for an adjust-
 5 ment factor applied pursuant to subsection
 6 (d)(7)(B)(iv).

7 “(6) The process for soliciting and accepting
 8 bids for purposes of paragraphs (3) and (5) of sub-
 9 section (d).

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

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

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

14 “(C) with respect to rejected bidders, the
 15 specific reasons for rejections of any bid, and,
 16 with respect to any such rejection, a means of
 17 ensuring the availability of the process of review
 18 or appeal to a rejected bidder.

19 “(8) The calculation of and compliance with the
 20 requirement of section 1847(b)(6)(D), as made ap-
 21 plicable to the market pricing program by subsection
 22 (e).

23 “(g) RELIANCE ON AUCTION EXPERT AND MARKET
 24 MONITOR IN ESTABLISHING AND OPERATING MARKET

1 PRICING PROGRAM; ADVISORY COMMITTEE REPORT AND
2 MONITORING.—

3 “(1) AUCTION EXPERT AND MARKET MON-
4 ITOR.—

5 “(A) IN GENERAL.—The Secretary shall,
6 not later than 3 months after the date of the
7 enactment of this section, through the Office of
8 the Assistant Secretary for Planning and Eval-
9 uation, enter into a contract with an individual
10 to serve as the auction expert and such a con-
11 tract to serve as a market monitor to assist in
12 the design, development, implementation and
13 functioning of the auction to be conducted pur-
14 suant to subsection (b). The auction expert and
15 market monitor shall report and be accountable
16 to the Secretary.

17 “(B) SELECTION OF AUCTION EXPERT
18 AND MARKET MONITOR; TERM; ACCESS TO IN-
19 FORMATION.—

20 “(i) COMPETITIVE PROCESS.—The se-
21 lection of the individual to serve as the
22 auction expert and as a market monitor
23 under subparagraph (A) shall be under-
24 taken through a competitive process.

1 “(ii) DISQUALIFICATIONS.—An indi-
2 vidual may not be selected as the auction
3 expert if such individual—

4 “(I) is a current or former em-
5 ployee of the Centers for Medicare &
6 Medicaid Services;

7 “(II) is a current or former con-
8 tractor for the Centers for Medicare &
9 Medicaid Services that participated in
10 the implementation of the competitive
11 acquisition program under section
12 1847(a);

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

17 “(IV) does not have appropriate
18 educational credentials.

19 “(iii) ACCESS TO INFORMATION.—The
20 Secretary shall make available to the auc-
21 tion expert and the market monitor all ap-
22 plicable information (including confidential
23 information) on the relevant markets
24 throughout the duration of the market
25 pricing program.

1 “(iv) TERM OF CONTRACT.—The con-
2 tract for the auction expert and for the
3 market monitor under this paragraph shall
4 be for a period of 4 years.

5 “(2) FUNCTIONS OF AUCTION EXPERT.—The
6 auction expert shall conduct the activities as de-
7 scribed in this section, including—

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

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

13 “(C) lead the auction, contracting, and
14 other aspects of implementing the market pric-
15 ing program with the advice of the market mon-
16 itor.

17 “(3) FUNCTIONS OF MARKET MONITOR.—

18 “(A) PARTICIPATE IN DESIGN CON-
19 FERENCE.—The market monitor shall partici-
20 pate in the design conference under subsection
21 (c)(2)(C) and, at the conference, provide a pres-
22 entation on the responsibilities of the market
23 monitor throughout the year and common on
24 key aspects of the design and their purpose.

1 “(B) REVIEW OF FINAL DESIGN.—The
2 market monitor shall review the final auction
3 design recommendations submitted under sub-
4 section (c)(2)(D) and, within one month of the
5 release of such recommendations, provide public
6 comment on them.

7 “(C) MONITORING.—

8 “(i) IN GENERAL.—The market mon-
9 itor shall provide ongoing monitoring of
10 the performance of suppliers and the ef-
11 fects of the market pricing program to
12 guard against the occurrence of any nega-
13 tive effects specified in subsection (d)(8).

14 “(ii) PROVIDE TRANSPARENCY OF IN-
15 FORMATION.—The monitoring under
16 clause (i) shall include public availability of
17 the number of suppliers providing market
18 priced items and services in an eligible
19 auction area during each year of the oper-
20 ation of the market pricing program.

21 “(D) BIENNIAL REPORTS TO SEC-
22 RETARY.—The market monitor shall provide bi-
23 annual reports to the Secretary in the initial
24 two years and annually thereafter on the devel-

1 opment and operations of the market pricing
2 program. In each report, the monitor shall—

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

5 “(ii) recommend solutions to problems
6 so identified.

7 “(E) ANNUAL REPORT.—The market mon-
8 itor shall provide an annual report to Congress
9 on the operation and functioning of the market
10 pricing program. Each such report shall include
11 information on—

12 “(i) potential problems with the pro-
13 gram;

14 “(ii) recommended solutions to prob-
15 lems identified pursuant to subclause (I);

16 “(iii) the appropriateness of HCPCS
17 codes selected for auctions;

18 “(iv) an evaluation on the ability of
19 individuals eligible for benefits under this
20 part to obtain items and services subject to
21 the market pricing program;

22 “(v) any adverse health effects result-
23 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-

1 mit to the Congress a report on the market
2 pricing program established under section
3 1847C. The report shall include information on
4 the design of the market pricing program, ac-
5 cess to and quality of market priced items and
6 services by beneficiaries under the program.”;

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

9 (4) in paragraph (5), by inserting before the pe-
10 riod at the end the following: “, except that the re-
11 constituted Committee shall terminate 2 years after
12 the date of the appointment of the auction expert
13 and the market monitor under section
14 1847C(g)(1)”.

15 (b) NEGATIVE PRESSURE WOUND THERAPY STAND-
16 ARDS.—The Secretary of Health and Human Services, in
17 consultation with relevant stakeholders (as defined in sec-
18 tion 1847C(c)(2)(A)(ii) of the Social Security Act, as
19 added by section 4), shall develop standards for coverage
20 and quality of negative pressure wound therapy items and
21 services (within the meaning of section
22 1847(a)(1)(D)(i)(IV) of such Act, 42 U.S.C. 1395w-
23 3(a)(1)(D)(i)(IV)).

1 **SEC. 6. ADDITIONAL BUDGETARY OFFSET.**

2 (a) IN GENERAL.—In addition to the payment reduc-
3 tions specified in the amendments made by section
4 3(a)(1), unobligated balances of all discretionary appro-
5 priations for each fiscal year (beginning with fiscal year
6 2013) are hereby rescinded in an amount equal to the
7 amount necessary to make this Act budget neutral for
8 such fiscal year.

9 (b) IMPLEMENTATION.—The Director of the Office of
10 Management and Budget shall determine and identify
11 each account, program, project, and activity to which the
12 rescission under subsection (a) shall apply and the amount
13 of such rescission that shall apply to each such account,
14 program, project and activity. Not later than 60 days after
15 the date of the enactment of this Act, the Director of the
16 Office of Management and Budget shall submit a report
17 to the Secretary of the Treasury and to Congress of the
18 accounts, programs, projects, activities, and amounts de-
19 termined and identified for rescission under the preceding
20 sentence.

21 (c) EXCEPTION.—This section shall not apply to ac-
22 counts, programs, projects and activities operated by the
23 Department of Defense or the Department of Veteran's
24 Affairs.

○