

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.

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## 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

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## 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

1 (ii) by inserting after the first sen-  
2 tence the following: “The preceding sen-  
3 tence shall not apply to items and services  
4 furnished in an eligible auction area (with-  
5 in the meaning of subsection (a)(4) of sec-  
6 tion 1847C) on or after the date of the im-  
7 plementation of the market pricing pro-  
8 gram under such section.”; and

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

11 “(C) NON-CONTRACTED SUPPLIERS IN  
12 MARKET PRICING PROGRAM.—The Secretary  
13 also shall award contracts to any supplier that  
14 meets eligibility requirements under this title  
15 for the furnishing of such items and services so  
16 long as the supplier accepts the price estab-  
17 lished under such program as payment in full  
18 for such items and services.”.

19 (3) PAYMENT FOR OFF-THE-SHELF  
20 ORTHOTICS.—Section 1834(h)(1) of the Social Secu-  
21 rity Act (42 U.S.C. 1395m(h)(1)) is amended by  
22 adding at the end the following new subparagraph:

23 “(I) APPLICATION OF MARKET PRICING  
24 PROGRAM; LIMITATION OF INHERENT REASON-  
25 ABLENESS 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 prie-

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-

1 cluding through the auction plan con-  
2 ference and other outreach efforts.

3 “(ii) RELEVANT STAKEHOLDERS.—

4 For purposes of clause (i), the term ‘rel-  
5 evant stakeholders’ means suppliers and  
6 manufacturers of market priced items and  
7 services (and trade associations rep-  
8 resenting such suppliers and manufactur-  
9 ers), physicians, and individuals entitled to  
10 benefits under this title (and representa-  
11 tives of such individuals).

12 “(B) DRAFT AUCTION DESIGN.—Not later

13 than 2 months after the date the auction expert  
14 first begins service under subsection (g)(1), the  
15 auction expert shall develop a draft auction de-  
16 sign that shall propose auction areas nation-  
17 wide, lead products for each product category,  
18 and the price index associated with each lead  
19 product, and proposed rules for the conduct of  
20 auctions.

21 “(C) DESIGN CONFERENCE.—

22 “(i) IN GENERAL.—Not later than 4  
23 months after the date the auction expert  
24 first begins service under subsection (g)(1),  
25 the Secretary shall convene a design con-



1           ference (in this paragraph referred to as  
2           the ‘design conference’) for the auction  
3           process under this section. The auction ex-  
4           pert shall chair the conference.

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

8                   “(I) MANUFACTURERS AND SUP-  
9                   PLIERS OF DMEPOS.—Representatives  
10                  of market priced items and services.

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

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

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

22           “(iii) PURPOSE OF CONFERENCE.—  
23           The purpose of the design conference shall  
24           be to review the auction design developed  
25           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

1 (4) from among each market priced item and  
2 service is subject to auction among all eligible  
3 auction areas. The Secretary shall ensure that  
4 each product category is auctioned in at least a  
5 sufficient number of eligible auction areas to  
6 produce a sample of bids based on the percent-  
7 ages set forth in subsection (a)(3).

8 “(3) REQUIREMENTS TO SUBMIT BID IN AUC-  
9 TION.—

10 “(A) SUBMISSION OF BIDS.—Any supplier  
11 that complies with the requirements of subpara-  
12 graph (B) and that is identified by the Sec-  
13 retary pursuant to paragraph (5)(C) as a sup-  
14 plier of a market priced item or service that is  
15 the subject of a market-priced auction in an eli-  
16 gible auction area may submit a bid at such  
17 auction.

18 “(B) FINANCIAL ASSURANCES.—

19 “(i) IN GENERAL.—In order to be eli-  
20 gible to participate in a market-priced auc-  
21 tion, a supplier must submit a cash deposit  
22 in an amount determined by the Secretary.

23 “(ii) LETTER OF CREDIT IN LIEU OF  
24 CASH DEPOSIT.—The Secretary may, in  
25 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

1 (A) shall be assigned based upon each auc-  
2 tion a weight expressed as a percentage of  
3 the lead product, which percentage of the  
4 clearing price, established by the auction  
5 expert in the plan design and adjusted  
6 after input from providers at the design  
7 plan conference, establishes the price of  
8 each item and service in the category.

9 “(iii) ESTABLISHING CLEARING PRICE  
10 FOR ITEMS AND SERVICES.—The Secretary  
11 shall establish the clearing price for each  
12 market priced item and service that is sub-  
13 ject to the auction based upon the data  
14 submitted under this subparagraph. Such  
15 clearing price shall be equal to the highest  
16 cost bid that will meet capacity targets in  
17 the eligible auction area for such item and  
18 service.

19 “(5) CONDUCT OF AUCTION.—

20 “(A) IN GENERAL.—The Secretary shall  
21 conduct the market-priced auctions consistent  
22 with the provisions of this paragraph.

23 “(B) 3 MONTHS BEFORE AUCTION DATE.—  
24 Approximately 3 months before the scheduled  
25 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

1 that applies to participate in an auction  
2 under this section. A supplier's capacity  
3 shall be based upon the capacity of the  
4 supplier in the preceding year in the auc-  
5 tion area.

6 “(ii) NEW SUPPLIERS.—Each bidding  
7 supplier that has no historic capacity in  
8 the auction area shall be assigned a base  
9 capacity for each produce category made  
10 available under the auction of 1 percent of  
11 the total dollar value of that item or serv-  
12 ice made available in the eligible auction  
13 area.

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

16 “(A) IN GENERAL.—With respect to mar-  
17 ket priced items or services that are provided in  
18 an eligible auction area in which—

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

23 “(ii) such an auction is not conducted,  
24 the auction price determined at an auction  
25 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;

1 “(vi) any material deterioration in the  
2 quality of items and services provided  
3 under the program;

4 “(vii) the costs of any preventable or  
5 prolonged hospitalizations due to lack of  
6 timely access to market priced items and  
7 services; and

8 “(viii) any negative business con-  
9 sequences to the supplier of any market  
10 priced items and services occurring as a re-  
11 sult of errors made in the conduct of the  
12 program.”.

13 **SEC. 5. APPLICATION OF EXISTING PROVISIONS.**

14 (a) REVISIONS TO PROGRAM ADVISORY AND OVER-  
15 SIGHT COMMITTEE.—Section 1847(c) of the Social Secu-  
16 rity Act (42 U.S.C. 1395w-3(c)) is amended—

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

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

22 “(C) ADDITIONAL REPORT TO CON-  
23 GRESS.—Not later than 1 year after the date of  
24 the appointment of the auction expert under  
25 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(e)(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.

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