

113TH CONGRESS  
1ST SESSION

# H. R. 2375

To delay for at least 6 months the implementation of round 1 recompetes and round 2 of the Medicare durable medical equipment (DME) competitive bidding program and of the national mail order program for diabetic testing supplies to permit Congress an opportunity to reform the competitive bidding program, to provide for an evaluation of that program by an auction expert team, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2013

Mr. THOMPSON of Pennsylvania (for himself and Mr. BRALEY of Iowa) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To delay for at least 6 months the implementation of round 1 recompetes and round 2 of the Medicare durable medical equipment (DME) competitive bidding program and of the national mail order program for diabetic testing supplies to permit Congress an opportunity to reform the competitive bidding program, to provide for an evaluation of that program by an auction expert team, and for other purposes.

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 “Transparency and Ac-  
3 countability in Medicare Bidding Act of 2013”.

4 **SEC. 2. DELAY IN IMPLEMENTING THE MEDICARE DME**  
5 **COMPETITIVE BIDDING PROGRAM AND THE**  
6 **NATIONAL MAIL ORDER PROGRAM FOR DIA-**  
7 **BETIC TESTING SUPPLIES.**

8 (a) **IN GENERAL.**—Notwithstanding any other provi-  
9 sion of law, the Secretary of Health and Human Services  
10 shall delay from July 1, 2013, to a date that is no earlier  
11 than December 31, 2013, the dates of implementation  
12 of—

13 (1) round 2 of the DMEPOS competitive bid-  
14 ding program under section 1847 of the Social Secu-  
15 rity Act (42 U.S.C. 1395w-3); and

16 (2) the single payment amounts under the na-  
17 tional mail order competition for diabetic supplies  
18 under such section.

19 (b) **ROUND 1 RECOMPETE DELAY.**—Notwithstanding  
20 any other provision of law, the Secretary of Health and  
21 Human Services shall delay the start of round 1 recompet-  
22 e of such DMEPOS competitive bidding program from Jan-  
23 uary 1, 2014, to a date that is no earlier than 6 months  
24 after the date of initial implementation of round 2 of such  
25 program.

1 **SEC. 3. EVALUATION OF DMEPOS COMPETITIVE BIDDING**  
2 **PROGRAM BY AUCTION EXPERT TEAM.**

3 (a) IN GENERAL.—The Secretary of Health and  
4 Human Services (in this section referred to as the “Sec-  
5 retary”), not later than 3 months after the date of the  
6 enactment of this Act and acting through the Office of  
7 the Assistant Secretary for Planning and Evaluation, shall  
8 contract 3 auction experts, a health economist, and an  
9 econometrician to work as a team (in this section collec-  
10 tively referred to as the “auction expert team”), led by  
11 the auction experts, to independently review and assess all  
12 aspects of round 1 re-bid and round 2 of the DMEPOS  
13 competitive bidding program under section 1847 of the  
14 Social Security Act (42 U.S.C. 1395w–3), including the  
15 design, development, implementation, adequacy of support  
16 for Medicare beneficiaries with chronic illness or disabili-  
17 ties, market fairness, sustainability, and functioning of  
18 such program.

19 (b) SELECTION OF AUCTION EXPERT TEAM.—

20 (1) IN GENERAL.—The selection of the experts  
21 on the auction expert team under subsection (a)  
22 shall be undertaken through a competitive process.

23 (2) DISQUALIFICATIONS.—An individual shall  
24 not be selected for the auction expert team if such  
25 individual—

1 (A) is a current or former employee of the  
2 Centers for Medicare & Medicaid Services;

3 (B) is a current or former contractor for  
4 the Centers for Medicare & Medicaid Services  
5 that participated in the design or implementa-  
6 tion of the DMEPOS competitive bidding pro-  
7 gram;

8 (C) does not have significant experience in  
9 implementing auctions of similar complexity in  
10 government programs; and

11 (D) does not have appropriate educational  
12 credentials.

13 (c) ACCESS TO INFORMATION.—The Secretary shall  
14 make available to the auction expert team all applicable  
15 information (including confidential information) on the  
16 DMEPOS competitive bidding program in its entirety (in-  
17 cluding information on its design and the bidding under  
18 round 1, round 1 re-bid, and round 2).

19 (d) REPORT TO SECRETARY AND CONGRESS.—

20 (1) IN GENERAL.—Not later than 4 months  
21 after the date the Secretary enters into the contract  
22 with the experts under subsection (a), the auction  
23 expert team shall submit a report to the Secretary  
24 and to the Congress on its assessment and review  
25 under subsection (a).

1           (2) ITEMS TO BE INCLUDED IN REPORT.—Such  
2 report shall include the following and shall identify  
3 all potential problems with the DMEPOS competi-  
4 tive bidding program:

5           (A) A review and assessment of the appro-  
6 priateness of HCPCS codes selected for auc-  
7 tions.

8           (B) An evaluation and assessment of the  
9 ability of individuals eligible for the DMEPOS  
10 items subject to the program to obtain these  
11 items and services, including an assessment of  
12 utilization patterns.

13           (C) An analysis of any current or future  
14 adverse effects on beneficiaries' health outcomes  
15 related to the program and related costs to the  
16 Medicare trust fund, including an analysis of  
17 those beneficiaries in each competitively bid  
18 area who did not continue to receive such items  
19 and the effect on their Medicare claims under  
20 parts A, B, and D.

21           (D) An identification and report on the  
22 cause of any material deterioration in the qual-  
23 ity of items and services provided to an indi-  
24 vidual eligible for DMEPOS benefits under the  
25 program.

1           (E) An evaluation of the costs of any pre-  
2           ventable or prolonged hospitalizations due to  
3           lack of timely access to items and related serv-  
4           ices subject to the program.

5           (F) An identification, for each product cat-  
6           egory and competitive bid area in the round 1  
7           re-bid, of the following:

8                   (i) The original winning bidders which  
9                   signed contracts and the number of al-  
10                  lowed unique Medicare beneficiaries each  
11                  contracting supplier fulfilled annually for  
12                  the calendar years 2010, 2011 and 2012 in  
13                  the competitive bidding areas.

14                  (ii) How many contracting suppliers  
15                  failed to submit beneficiary product claims  
16                  for more than 60 consecutive days.

17                  (iii) An identification of DMEPOS  
18                  suppliers added after January 1, 2011,  
19                  and the number of allowed unique Medi-  
20                  care beneficiaries each such added supplier  
21                  served annually for the calendar years  
22                  2010, 2011 and 2012 in the competitive  
23                  bidding areas.

1 (G) An identification, for each product cat-  
2 egory and each competitive bidding area in the  
3 round 1 re-bid and in round 2, of the following:

4 (i) The number of winning suppliers.

5 (ii) The number of such winning sup-  
6 pliers which have not previously supplied  
7 the DMEPOS products bid for in the com-  
8 petitive bidding area.

9 (iii) The total actual unique Medicare  
10 beneficiaries served by such winning sup-  
11 pliers, for 2010 with the round 1 re-bid  
12 and 2012 for round 2.

13 (iv) The total capacity, measured by  
14 unique Medicare beneficiaries to be served  
15 by such winning suppliers, as estimated by  
16 Secretary to meet the needs of seniors dur-  
17 ing the contracting period.

18 (v) Such total capacity as bid by the  
19 winning bidders.

20 (vi) The total capacity attributed by  
21 the Secretary to the winning bidders.

22 (3) RECOMMENDATIONS.—Such report shall  
23 also include such recommendations for changes in  
24 such program as the auction expert team determines  
25 appropriate, including recommendations that re-

- 1 spond to all the potential problems identified under
- 2 paragraph (2).

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