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(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R.

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

Mr. PRICE of Georgia introduced the following bill; which was referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. TERMINATION OF COMPETITIVE ACQUISITION PRO-**
2 **GRAM.**

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

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

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

10 (3) by adding at the end the following new sub-
11 paragraph:

12 “(G) **TERMINATION OF PROGRAM; TRANSI-**
13 **TION.—**

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

25 “(ii) **CONTRACT TERMINATION.—**The
26 contracts awarded under this section be-

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

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

17 (a) TRANSITIONAL PAYMENT RULES.—

18 (1) PAYMENT FOR DURABLE MEDICAL EQUIP-
19 MENT.—

20 (A) IN GENERAL.—Section 1834(a)(1) of
21 the Social Security Act (42 U.S.C.
22 1395m(a)(1)) is amended—

23 (i) in subparagraph (F)(i)—

24 (I) by inserting “and before July
25 1, 2013,” after “January 1, 2011,”;

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

3 (III) by adding “and” at the end;
4 (ii) in subparagraph (F)(ii)—

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

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

11 (iii) by striking clause (iii) of subpara-
12 graph (F);

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

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

17 “(G) PAYMENT RATES IN ROUND 1 AREAS
18 DURING TRANSITION.—

19 “(i) IN GENERAL.—In the case of cov-
20 ered items and services that are furnished
21 in an area that had been designated by the
22 Secretary as a competitive acquisition pro-
23 gram under section 1847(a)(1)(B)(i)(I) on
24 or after the date on which contracts for
25 the furnishing of such covered items and

1 services expire, the payment basis under
2 this subsection for such items and services
3 furnished in such area shall be the amount
4 described in clause (ii) or (iii), as the case
5 may be.

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

9 “(I) IN GENERAL.—In the case
10 of covered items that were selected to
11 be furnished in the competitive acqui-
12 sition program (excluding diabetic
13 supplies) in a competitive acquisition
14 area selected pursuant to section
15 1847(a)(1)(B)(i)(II) on or after July
16 1, 2013, and before the date on which
17 the Secretary implements the market
18 pricing program under section 1847C,
19 subject to subclause (II), the payment
20 basis under this subsection for such
21 items and services furnished in such
22 areas shall be 95 percent of the
23 amount established under this sub-
24 section.

1 “(II) FURTHER REDUCTIONS IN
2 2014 AND 2015.—In the case of covered
3 items described in subclause (I) that
4 are furnished during 2014, the pay-
5 ment basis under this subsection for
6 such items furnished in such areas
7 shall be reduced by 10 percent from
8 the amount described in such sub-
9 clause. In the case of such items and
10 services that are furnished in such
11 areas on or after January 1, 2015,
12 and before the date on which the Sec-
13 retary implements the market pricing
14 program under section 1847C, the
15 payment basis under this subsection
16 for such items and services shall be
17 further reduced by 10 percent after
18 taking into account the reduction ef-
19 fected under the preceding sentence.

20 “(iii) PAYMENT RATES FOR DIABETIC
21 SUPPLIES.—

22 “(I) IN GENERAL.—In the case
23 of all diabetic testing supplies, mail
24 order and non-mail order (HCPCS
25 Codes A4233, A4234, A4235, A4236,

1 A4253, A4256, A4258, and A4259,
2 including the KL modifier), effective
3 July 1, 2013, and before the date on
4 which the Secretary implements the
5 market pricing program under section
6 1847C and subject to subclause (II),
7 the payment basis under this sub-
8 section for such supplies shall be 90
9 percent of the amount otherwise es-
10 tablished under this subsection.

11 “(II) FURTHER REDUCTIONS IN
12 2014 AND 2015.—In the case of sup-
13 plies described in subclause (I) that
14 are furnished during 2014, the pay-
15 ment basis under this subsection for
16 such items furnished in such areas
17 shall be reduced by 15 percent from
18 the amount described in such sub-
19 clause. In the case of such supplies
20 that are furnished in such areas on or
21 after January 1, 2015, and before the
22 date on which the Secretary imple-
23 ments the market pricing program
24 under section 1847C, the payment
25 basis under this subsection for such

1 supplies shall be further reduced by
2 15 percent after taking into account
3 the reduction effected under the pre-
4 ceding sentence.”.

5 (B) CONFORMING AMENDMENTS.—Section
6 1842(s) of the Social Security Act (42 U.S.C.
7 1395u(s)) is amended—

8 (i) in paragraph (3), in the matter
9 preceding subparagraph (A), by inserting
10 “and that are furnished in such an area on
11 or before July 1, 2013” after “section
12 1847(a)”;

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

15 “(4)(A)(i) In the case of items and services described
16 in paragraph (2)(D) that are furnished in an area that
17 had been designated by the Secretary as a competitive ac-
18 quisition area under section 1847(a)(1)(B)(i)(I) on or
19 after the date on which contracts for the furnishing of
20 such covered items and services expire, the payment basis
21 under this subsection for such items and services fur-
22 nished in such area shall be the amounts described in
23 clause (ii).

24 “(ii)(I) In the case of items and services described
25 in paragraph (2)(D) that were selected to be furnished in

1 the competitive acquisition program in a competitive ac-
2 quisition area selected pursuant to section
3 1847(a)(1)(B)(i)(II) on or after July 1, 2013, and before
4 the date on which the Secretary implements the market
5 pricing program under section 1847C, subject to subclause
6 (II), the payment basis under this subsection for such
7 items and services furnished in such areas shall be 95 per-
8 cent of the amount otherwise established under this sub-
9 section.

10 “(II) In the case of covered items and services de-
11 scribed in subclause (I) that are furnished during 2014,
12 the payment basis under this subsection for such items
13 and services furnished in such areas shall be reduced by
14 10 percent from the amount described in such subclause.
15 In the case of such items and services that are furnished
16 in such areas on or after January 1, 2015, and before
17 the date on which the Secretary implements the market
18 pricing program under section 1847C, the payment basis
19 under this subsection for such supplies shall be further
20 reduced by 10 percent after taking into account the reduc-
21 tion effected under the preceding sentence.

22 “(B)(i) In the case of items and services described
23 in paragraph (2)(D) that are included in the market prie-
24 ing program under section 1847C, the payment basis
25 under this subsection for such items and services fur-

1 nished in such area shall be the payment basis determined
2 under such competitive acquisition program.

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

10 (2) TREATMENT OF SUPPLIERS IN COMPETI-
11 TIVE ACQUISITION PROGRAM AREAS.—Section
12 1847(b)(4) of the Social Security Act (42 U.S.C.
13 1395w–3(b)(4)) is amended—

14 (A) in subparagraph (A)—

15 (i) in the first sentence, by striking
16 “The Secretary may limit” and inserting
17 “Until December 31, 2013, the Secretary
18 may limit”; and

19 (ii) by inserting after the first sen-
20 tence the following: “The preceding sen-
21 tence shall not apply to items and services
22 furnished in an eligible auction area (with-
23 in the meaning of subsection (a)(4) of sec-
24 tion 1847C) on or after the date of the im-

1 plementation of the market pricing pro-
2 gram under such section.”; and

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

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

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

17 “(I) APPLICATION OF MARKET PRICING
18 PROGRAM; LIMITATION OF INHERENT REASON-
19 ABLENESS AUTHORITY.—In the case of
20 orthotics described in subsection (b)(1)(K) of
21 section 1847C furnished on or after January 1,
22 2014, in an eligible auction area, that are in-
23 cluded in a market pricing program under such
24 section—

1 “(i) the payment basis under this sub-
2 section for such orthotics furnished in such
3 area shall be the payment basis determined
4 under such market pricing program; and

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

14 (b) POLICY AFTER IMPLEMENTATION OF THE MAR-
15 KET PRICING PROGRAM.—

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

20 “(H) APPLICATION OF MARKET PRICING
21 PROGRAM; LIMITATION OF INHERENT REASON-
22 ABLENESS AUTHORITY.—

23 “(i) IN GENERAL.—In the case of
24 market priced items and services described
25 in section 1847C(b)(1) furnished on or

1 after the date of implementation of a mar-
2 ket pricing program for which a price has
3 been established under the program con-
4 ducted in an eligible auction area under
5 section 1847C, the payment basis under
6 this subsection—

7 “(I) in the eligible auction area
8 shall be the amount determined under
9 the auction conducted in such eligible
10 auction area for such items and serv-
11 ices; or

12 “(II) in another eligible auction
13 area shall be the amount determined
14 under subclause (I) adjusted by the
15 appropriate factor described in section
16 1847C(d)(7)(B)(iv).

17 “(ii) NO ADJUSTMENT IN PAYMENT
18 AMOUNT DURING INITIAL TWO-YEAR PE-
19 RIOD OF PRICING PROGRAM.—During the
20 term of any contract awarded pursuant to
21 section 1847C(d)(6) for an item and serv-
22 ice described in clause (i), the Secretary
23 may not adjust the payment basis estab-
24 lished under such clause to take into ac-
25 count the effects of a later-conducted auc-

1 tion during that two-year contract period.
2 The Secretary may, at the termination of
3 a contract awarded under section
4 1847C(d)(6) for such an item or service,
5 adjust such payment basis to take into ac-
6 count the effects of a later-conducted auc-
7 tion.

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

20 “(iv) CONTINUED USE OF ADDI-
21 TIONAL INFORMATION.—In the case of cov-
22 ered items furnished on or after January
23 1, 2016, the Secretary shall continue to
24 make such adjustments described in clause
25 (ii) as, under such market pricing pro-

1 gram, additional covered items are phased
2 in or information is updated as contracts
3 are renewed under such program.”.

4 (2) REGULATORY AUTHORITY.—Section
5 1834(a)(1)(G) of the Social Security Act (42 U.S.C.
6 1395w-3(a)(1)(G)) is amended—

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

9 (B) by striking “subparagraph (F)(ii)”
10 and inserting “subparagraph (F)(ii), subpara-
11 graph (H)(iii),”; and

12 (C) by inserting “or eligible auction areas
13 in which an auction has been conducted, after
14 June 30, 2013,” after “competitive acquisition
15 areas”.

16 **SEC. 4. ESTABLISHMENT OF DMEPOS MARKET PRICING**
17 **PROGRAM.**

18 (a) IN GENERAL.—Part B of title XVIII of the Social
19 Security Act is amended by inserting after section 1847B
20 (42 U.S.C. 1395w-3b) the following new section:

21 “DMEPOS MARKET PRICING PROGRAM

22 “SEC. 1847C. (a) ESTABLISHMENT.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish and implement a market pricing program (in
25 this section referred to as ‘market pricing program’)
26 under which auctions are conducted in eligible auc-

1 tion areas (as defined in paragraph (4)) throughout
2 the United States for the furnishing of market
3 priced items and services (as defined in subsection
4 (b)) for which payment is made under this part.

5 “(2) ROLES OF AUCTION EXPERT AND MARKET
6 MONITOR.—The elements of the market pricing pro-
7 gram, including eligible auction areas, auction de-
8 sign, establishing of clearing prices, and conduct of
9 auctions, shall be established and operated in con-
10 sultation with, and after input and review by, the
11 auction expert and the market monitor under sub-
12 section (g). In this section, the terms ‘auction ex-
13 pert’ and ‘market monitor’ refer to the respective
14 auction expert and market monitor contracted with
15 under subsection (g)(1).

16 “(3) IMPLEMENTATION.—The market pricing
17 program shall be implemented in all eligible auction
18 areas so that market pricing occurs nationwide in
19 the first year of implementation consistent with the
20 following:

21 “(A) FIRST YEAR OF IMPLEMENTATION.—

22 In the first year of implementation—

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

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

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

6 “(iv) prices for categories not selected
7 for auction in the area shall be set by ref-
8 erence to auctions held for those categories
9 in econometrically similar areas; and

10 “(v) in those areas in which no auc-
11 tions are held, prices for all categories will
12 be set by reference to auctions held for
13 those categories in econometrically similar
14 areas.

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

17 “(i) auctions shall be held in other eli-
18 gible auction areas that include 10 percent
19 of eligible auction areas; and

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

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

1 “(i) auctions shall be held in an addi-
2 tional 10 percent of eligible auction areas,
3 selected by the Secretary annually on an
4 ongoing and rotating basis, until all eligi-
5 ble auction areas have been covered; 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 “(D) Once the market pricing program is
11 applied throughout the United States under
12 subparagraph (C), the Secretary shall conduct
13 auctions for different eligible auction areas
14 throughout the United States on an ongoing
15 and rotating basis covering 10 percent of eligi-
16 ble auction areas no later than March for each
17 subsequent year.

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

23 “(4) ELIGIBLE AUCTION AREAS.—

24 “(A) IN GENERAL.—In this section and
25 section 1834, the term ‘eligible auction areas’

1 means counties, aggregations of counties, or
2 parts of counties, not excluded under subpara-
3 graph (D), as established by the Secretary.

4 “(B) MARKET AREAS MUST REFLECT ECO-
5 NOMIC INTERDEPENDENCY.—In determining
6 and selecting eligible auction areas, the Sec-
7 retary shall choose, from among counties, ag-
8 gregations of counties, or parts of counties,
9 auction areas that form an economically inter-
10 dependent area reflecting standard econometric
11 market models. Nothing in this subparagraph
12 shall preclude the Secretary from subdividing a
13 large county to take into account population
14 and geographic size in establishing auction
15 areas in order to comply with this subpara-
16 graph.

17 “(C) SELECTION OF AUCTION AREAS.—In
18 selecting auction areas in which an auction will
19 be conducted under this section, the Secretary
20 shall ensure that several auction areas of each
21 econometric model are chosen.

22 “(D) EXCLUSION OF CERTAIN AUCTION
23 AREAS.—The Secretary shall not subject areas
24 described in clause (iii) of section
25 1847(a)(1)(D) to market program reimburse-

1 ment rates before the year specified in such
2 clause.

3 “(5) APPLICATION OF CERTAIN POLICIES AP-
4 PLICABLE TO COMPETITIVE ACQUISITION PRO-
5 GRAMS.—The following provisions of subsection
6 (a)(1) of section 1847 shall apply to the market
7 pricing program in the same manner as they apply
8 to competitive acquisition programs under such sec-
9 tion except as otherwise provided:

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

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

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

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

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

6 “(A) Oxygen supplies and equipment.

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

9 “(C) Manual wheelchairs.

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

12 “(E) Continuous positive airway pressure
13 devices, respiratory assistive devices, and re-
14 lated supplies.

15 “(F) Hospital beds and related accessories.

16 “(G) Walkers and related accessories.

17 “(H) Support services (Group 2 mattresses
18 and overlays).

19 “(I) Negative pressure wound therapy
20 pumps and related supplies and accessories.

21 “(J) Diabetic supplies.

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

1 “(L) External infusion pumps and sup-
2 plies.

3 “(M) Other items and services (other than
4 those items and services specified in paragraph
5 (2)) that could have been subject to participa-
6 tion in competitive acquisition programs under
7 section 1847(a)(1).

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

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

12 “(B) A complex rehabilitative power wheel-
13 chair and related accessories.

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

17 “(D) A medical device classified in class
18 III under the Federal Food, Drug, and Cos-
19 metic Act.

20 “(c) MARKET PRICING PROGRAM REQUIREMENTS.—

21 “(1) IN GENERAL.—The Secretary shall estab-
22 lish an auction design through the process described
23 in paragraph (2), that meets the requirements of
24 paragraph (3), and shall ensure that the first auc-
25 tion will be conducted for all eligible auction areas

1 no later than 14 months after the date of entering
2 into the contract with the auction expert under sub-
3 section (g)(1).

4 “(2) AUCTION PROCESS; INPUT OF STAKE-
5 HOLDERS; DESIGN.—

6 “(A) TRANSPARENT PROCESS RE-
7 QUIRED.—

8 “(i) IN GENERAL.—In establishing
9 such auction design, the Secretary shall
10 utilize an open and transparent process
11 that involves all relevant stakeholders (as
12 defined in clause (ii)) in the market, in-
13 cluding through the auction plan con-
14 ference and other outreach efforts.

15 “(ii) RELEVANT STAKEHOLDERS.—
16 For purposes of clause (i), the term ‘rel-
17 evant stakeholders’ means suppliers and
18 manufacturers of market priced items and
19 services (and trade associations rep-
20 resenting such suppliers and manufactur-
21 ers), physicians, and individuals entitled to
22 benefits under this title (and representa-
23 tives of such individuals).

24 “(B) DRAFT AUCTION DESIGN.—Not later
25 than 2 months after the date the auction expert

1 first begins service under subsection (g)(1), the
2 auction expert shall develop a draft auction de-
3 sign that shall propose auction areas nation-
4 wide, lead products for each product category,
5 and the price index associated with each lead
6 product, and proposed rules for the conduct of
7 auctions.

8 “(C) DESIGN CONFERENCE.—

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

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

20 “(I) MANUFACTURERS AND SUP-
21 PLIERS OF DMEPOS.—Representatives
22 of market priced items and services.

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

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

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

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

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

18 “(I) the auction expert shall pro-
19 vide a demonstration of the prelimi-
20 nary auction design;

21 “(II) the auction expert shall
22 lead a mock auction based upon such
23 design in which the attendees will par-
24 ticipate and offer comments and sug-
25 gestions for improvement;

1 “(III) the auction expert may es-
2 tablish working committees on major
3 issues; and

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

8 “(D) RECOMMENDATIONS.—

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

17 “(ii) FINAL DESIGN RECOMMENDA-
18 TION.—Not later than 3 months after the
19 last day of the design conference, the auc-
20 tion expert shall submit to the Secretary
21 final recommendations on the auction de-
22 sign for approval for expedited rulemaking.
23 In this clause, the term ‘expedited rule-
24 making process’ means a process of publi-
25 cation of the proposed auction design and

1 solicitation of public comments on such de-
2 sign. The provisions of section 1871(b)(1)
3 shall not apply to such process.

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

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

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

13 “(d) CONDUCT OF AUCTION.—

14 “(1) INITIAL AUCTION.—No later than 14
15 months after the date a contract is first entered into
16 with an auction expert under subsection (g), the
17 Secretary shall conduct auctions (each in this section
18 referred to as a ‘market-priced auction’) among enti-
19 ties supplying market priced items and services in
20 eligible auction areas that are selected in the auction
21 design and consistent with subsection (a)(3). Each
22 auction shall conclude no later than 2 months after
23 its commencement. Market-based auctions shall be
24 conducted in accordance with an auction design de-
25 veloped under subsection (c).

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

3 “(A) IN GENERAL.—In each eligible auc-
4 tion area in which a market-priced auction is
5 conducted, the Secretary shall select to be sub-
6 ject to auction a combination of 2 categories of
7 items and services from among the market
8 priced items and services.

9 “(B) ALL LISTED ITEMS AND SERVICES TO
10 BE SUBJECT TO AUCTION.—The Secretary shall
11 ensure in the market-priced auction that each
12 lead product that is identified under paragraph
13 (4) from among each market priced item and
14 service is subject to auction among all eligible
15 auction areas. The Secretary shall ensure that
16 each product category is auctioned in at least a
17 sufficient number of eligible auction areas to
18 produce a sample of bids based on the percent-
19 ages set forth in subsection (a)(3).

20 “(3) REQUIREMENTS TO SUBMIT BID IN AUC-
21 TION.—

22 “(A) SUBMISSION OF BIDS.—Any supplier
23 that complies with the requirements of subpara-
24 graph (B) and that is identified by the Sec-
25 retary pursuant to paragraph (5)(C) as a sup-

1 plier of a market priced item or service that is
2 the subject of a market-priced auction in an eli-
3 gible auction area may submit a bid at such
4 auction.

5 “(B) FINANCIAL ASSURANCES.—

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

10 “(ii) LETTER OF CREDIT IN LIEU OF
11 CASH DEPOSIT.—The Secretary may, in
12 the Secretary’s sole discretion, accept a let-
13 ter of credit from a financial institution ac-
14 ceptable to the Secretary instead of the
15 cash deposit otherwise required under
16 clause (i).

17 “(C) TREATMENT OF DEPOSITS SUB-
18 MITTED BY SUPPLIERS.—

19 “(i) SUCCESSFUL BIDDERS.—The
20 Secretary shall retain as a performance
21 guarantee the deposit submitted under
22 subparagraph (B)(i) of a supplier that has
23 submitted a winning bid at a market-
24 priced auction.

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

5 “(iii) DEPOSIT RETURN REQUIRE-
6 MENTS FOR PARTIALLY SUCCESSFUL SUP-
7 PLIERS.—If a supplier submits a bid that
8 is accepted at the auction, but the supplier
9 is not awarded a contract for the full
10 amount of the bid, the Secretary shall pro-
11 vide for a proportionate return of any such
12 deposit.

13 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
14 LISHING CLEARING PRICES.—

15 “(A) IN GENERAL.—For each product cat-
16 egory of items and services specified in sub-
17 section (b)(1) that is the subject of a market-
18 priced auction, the Secretary shall establish a
19 lead product. Such lead product shall be se-
20 lected based upon the price and utilization of
21 the product under this part.

22 “(B) LEAD PRODUCT CLEARING PRICE ES-
23 TABLISHES CLEARING PRICE FOR OTHER PROD-
24 UCTS.—

1 “(i) LEAD PRODUCT AS REFERENCE
2 POINT FOR OTHER PRODUCTS.—The lead
3 product selected under subparagraph (A)
4 shall be used as a reference point for all
5 other products (categorized by the
6 healthcare common procedure coding sys-
7 tem code) in the same category as the lead
8 product. Such lead product shall be as-
9 signed a weight of 100 percent.

10 “(ii) ADDITIONAL PRODUCTS IN EACH
11 PRODUCT CATEGORY.—Every other prod-
12 uct in the same product category as the
13 lead product identified under subparagraph
14 (A) shall be assigned based upon each auc-
15 tion a weight expressed as a percentage of
16 the lead product, which percentage of the
17 clearing price, established by the auction
18 expert in the plan design and adjusted
19 after input from providers at the design
20 plan conference, establishes the price of
21 each item and service in the category.

22 “(iii) ESTABLISHING CLEARING PRICE
23 FOR ITEMS AND SERVICES.—The Secretary
24 shall establish the clearing price for each
25 market priced item and service that is sub-

1 ject to the auction based upon the data
2 submitted under this subparagraph. Such
3 clearing price shall be equal to the highest
4 cost bid that will meet capacity targets in
5 the eligible auction area for such item and
6 service.

7 “(5) CONDUCT OF AUCTION.—

8 “(A) IN GENERAL.—The Secretary shall
9 conduct the market-priced auctions consistent
10 with the provisions of this paragraph.

11 “(B) 3 MONTHS BEFORE AUCTION DATE.—
12 Approximately 3 months before the scheduled
13 auction date, the Secretary shall detail auction
14 rules that are consistent with the auction plan
15 developed under this section. These rules shall
16 include the following:

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

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

21 “(iii) Performance obligations of con-
22 tract suppliers, guarantees, and penalties
23 for non-conformance.

24 “(iv) The product categories to be se-
25 lected (and their related healthcare com-

1 mon procedure coding system codes) from
2 within the market priced items and serv-
3 ices.

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

8 “(vi) The eligible auction areas na-
9 tionwide (and areas identified as having
10 the same econometric model) and those eli-
11 gible auction areas in which a market-
12 priced auction will be conducted each year.

13 “(C) 30 DAYS BEFORE AUCTION DATE.—
14 Thirty days before a scheduled auction date,
15 the Secretary shall review all applicants and
16 identify the qualified suppliers eligible to submit
17 bids. In carrying out this subparagraph, the
18 Secretary shall specify the following:

19 “(i) The historic capacity for each eli-
20 gible bidder for each category that will be
21 subject to the auction.

22 “(ii) Bidder eligibility by eligible auc-
23 tion area.

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

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

6 “(D) BIDDERS CONFERENCE.—Prior to
7 conducting each such auction, the auction ex-
8 pert shall conduct a conference of prospective
9 bidders in eligible auction areas in which an
10 auction will be conducted.

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

14 “(i) The time of the end of the round
15 of auctioning.

16 “(ii) The history of prior rounds in-
17 cluding the aggregate supply at the end of
18 the round price for each product category
19 by round.

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

24 “(i) The aggregate supply for each
25 item and service that is the subject of the

1 auction at the price established during the
2 auction.

3 “(ii) For each supplier that has par-
4 ticipated in the auction, its own supply for
5 all prices (from the initial starting price to
6 the end of round price) for each item and
7 service that is the subject of the auction.

8 “(iii) Revised schedule of rounds for
9 the next bidding day.

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

14 “(i) A list of winning suppliers.

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

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

24 “(6) CONDITIONS OF AWARDING CONTRACT.—

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

7 “(B) TERMS OF CONTRACT.—

8 “(i) MANDATORY ACCEPTANCE OF
9 CONTRACT.—A supplier that submits a bid
10 at or below such clearing price shall be
11 treated as having agreed to and accept the
12 contract awarded pursuant to subpara-
13 graph (A).

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

17 “(iii) NO REQUIREMENT TO SUPPLY
18 UP TO BID AMOUNT.—Nothing in this sub-
19 section shall require a supplier that is
20 awarded a contract pursuant to subpara-
21 graph (A) to supply a marked priced item
22 or service that is the subject of an auction
23 in the eligible auction area beyond the level
24 of demand for such item or service in the
25 eligible auction area, even if such level is

1 below the level that the supplier assumed
2 in its bid.

3 “(C) ENSURING ADEQUATE SELECTION OF
4 CONTRACTORS.—The Secretary may not award
5 a contract to any entity under the auction to
6 furnish such items or services unless the Sec-
7 retary finds that the conditions described in
8 section 1847(b)(2)(A) apply with respect to an
9 entity receiving a contract under this para-
10 graph.

11 “(D) SUFFICIENT CAPACITY.—

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

19 “(ii) NEW SUPPLIERS.—Each bidding
20 supplier that has no historic capacity in
21 the auction area shall be assigned a base
22 capacity for each produce category made
23 available under the auction of 1 percent of
24 the total dollar value of that item or serv-

1 ice made available in the eligible auction
2 area.

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

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

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

12 “(ii) such an auction is not conducted,
13 the auction price determined at an auction
14 for those items that is conducted in an-
15 other eligible auction area, as adjusted by
16 the factor described in subparagraph
17 (B)(iv), if appropriate,

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

21 “(B) SUPPLYING ITEMS OR SERVICES.—

22 “(i) IN GENERAL.—No entity other
23 than a supplier of a market priced item or
24 service that is the subject of a market-
25 priced auction in an eligible auction area

1 and that is a winning bidder in that eligi-
2 ble auction area shall be eligible to receive
3 a contract under paragraph (6)(A) in such
4 auction area.

5 “(ii) SUPPLYING ITEMS IN ECONOMI-
6 CALLY EQUIVALENT MARKETS.—A supplier
7 of a market priced item or service that is
8 not a winning bidder in the eligible auction
9 area described in clause (i) shall, subject to
10 clauses (iii) and (iv), be eligible to supply
11 any other market priced item or service
12 that was not the subject of an auction in
13 that eligible auction area but that was the
14 subject of a market-priced auction in an-
15 other econometrically similar eligible auc-
16 tion area (as determined by the Secretary).

17 “(iii) SUPPLIER MUST ACCEPT AUC-
18 TION PRICE.—Clause (ii) shall only apply
19 to a supplier that agrees to accept the
20 price determined at an auction in another
21 eligible auction area for a market priced
22 item or service.

23 “(iv) APPROPRIATE ADJUSTMENTS.—
24 The Secretary shall develop an adjustment
25 factor to reflect economic differences be-

1 tween the auction area that was the sub-
2 ject of the market-priced auction for the
3 item or service and the auction area in
4 which the supplier is located. The Sec-
5 retary shall use such adjustment factor to
6 adjust the payment amount made to a sup-
7 plier pursuant to clause (iii). The Sec-
8 retary, auction expert, and market monitor
9 shall consult with relevant stakeholders in
10 developing such factors.

11 “(8) MONITOR ACCESS AND QUALITY.—

12 “(A) IN GENERAL.—The Secretary shall
13 monitor the performance of suppliers that are
14 awarded a contract pursuant to paragraph (6)
15 to ensure compliance with the requirements of
16 this subsection, including the requirements and
17 obligations established by the auction expert
18 under paragraph (5)(B).

19 “(B) ENFORCEMENT.—If the Secretary,
20 after consultation with the market monitor, de-
21 termines that there has been a material failure
22 of a supplier that has been awarded a contract
23 pursuant to paragraph (6) to comply with such
24 requirements, the Secretary, after consultation
25 with the market monitor, shall implement en-

1 enforcement measures. Such enforcement meas-
2 ures may include the following:

3 “(i) A formal warning letter.

4 “(ii) Forfeiture of amounts submitted
5 as a performance deposit pursuant to sub-
6 section (d)(3)(B).

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

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

12 “(e) APPLICATION OF COMPETITIVE ACQUISITION
13 PROGRAM PROVISIONS.—In implementing the market
14 pricing program under this section, the provisions of sec-
15 tion 1847(b) shall be applied as follows:

16 “(1) Paragraph (3) shall apply, except that, for
17 purposes of contracts awarded under the market
18 pricing program, subparagraph (B) of such para-
19 graph shall be applied by substituting ‘2 years’ for
20 ‘3 years’.

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

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

24 “(A) the reference in subparagraph (A) of
25 such paragraph to subsection (a)(2) is deemed

1 a reference to subsection (b)(1) of this section;
2 and

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

7 “(4) Paragraphs (7) shall not apply.

8 “(5) Paragraph (8) shall apply.

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

13 “(7) Paragraph (10) shall apply, except that
14 such paragraph shall be applied as if a reference to
15 a competitive acquisition program includes a ref-
16 erence to the market pricing program.

17 “(8) Paragraph (11) shall not apply, except
18 that—

19 “(A) the pendency of any claim for review
20 under this section shall not delay any auction
21 round conducted pursuant to subsection (a)(3)
22 or (d)(1); and

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

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

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

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

10 “(3) The quality standards and the perform-
11 ance standards developed pursuant to subsection
12 (e)(3)(B).

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

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

19 “(6) The process for soliciting and accepting
20 bids for purposes of paragraphs (3) and (5) of sub-
21 section (d).

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

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

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

1 “(C) with respect to rejected bidders, the
2 specific reasons for rejections of any bid, and,
3 with respect to any such rejection, a means of
4 ensuring the availability of the process of review
5 or appeal to a rejected bidder.

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

10 “(g) RELIANCE ON AUCTION EXPERT AND MARKET
11 MONITOR IN ESTABLISHING AND OPERATING MARKET
12 PRICING PROGRAM; ADVISORY COMMITTEE REPORT AND
13 MONITORING.—

14 “(1) AUCTION EXPERT AND MARKET MON-
15 ITOR.—

16 “(A) IN GENERAL.—The Secretary shall,
17 not later than 3 months after the date of the
18 enactment of this section, through the Office of
19 the Assistant Secretary for Planning and Eval-
20 uation, enter into a contract with an individual
21 to serve as the auction expert and such a con-
22 tract to serve as a market monitor to assist in
23 the design, development, implementation and
24 functioning of the auction to be conducted pur-
25 suant to subsection (b). The auction expert and

1 market monitor shall report and be accountable
2 to the Secretary.

3 “(B) SELECTION OF AUCTION EXPERT
4 AND MARKET MONITOR; TERM; ACCESS TO IN-
5 FORMATION.—

6 “(i) COMPETITIVE PROCESS.—The se-
7 lection of the individual to serve as the
8 auction expert and as a market monitor
9 under subparagraph (A) shall be under-
10 taken through a competitive process.

11 “(ii) DISQUALIFICATIONS.—An indi-
12 vidual may not be selected as the auction
13 expert if such individual—

14 “(I) is a current or former em-
15 ployee of the Centers for Medicare &
16 Medicaid Services;

17 “(II) is a current or former con-
18 tractor for the Centers for Medicare &
19 Medicaid Services that participated in
20 the implementation of the competitive
21 acquisition program under section
22 1847(a);

23 “(III) does not have significant
24 experience in implementing auctions

1 of similar complexity in government
2 programs; and

3 “(IV) does not have appropriate
4 educational credentials.

5 “(iii) ACCESS TO INFORMATION.—The
6 Secretary shall make available to the auc-
7 tion expert and the market monitor all ap-
8 plicable information (including confidential
9 information) on the relevant markets
10 throughout the duration of the market
11 pricing program.

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

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

19 “(A) development of a draft auction design
20 and design conference under subparagraphs (B)
21 and (C) of subsection (e)(2);

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

24 “(C) lead the auction, contracting, and
25 other aspects of implementing the market prie-

1 ing program with the advice of the market mon-
2 itor.

3 “(3) FUNCTIONS OF MARKET MONITOR.—

4 “(A) PARTICIPATE IN DESIGN CON-
5 FERENCE.—The market monitor shall partici-
6 pate in the design conference under subsection
7 (c)(2)(C) and, at the conference, provide a pres-
8 entation on the responsibilities of the market
9 monitor throughout the year and comment on
10 key aspects of the design and their purpose.

11 “(B) REVIEW OF FINAL DESIGN.—The
12 market monitor shall review the final auction
13 design recommendations submitted under sub-
14 section (c)(2)(D) and, within one month of the
15 release of such recommendations, provide public
16 comment on them.

17 “(C) MONITORING.—

18 “(i) IN GENERAL.—The market mon-
19 itor shall provide ongoing monitoring of
20 the performance of suppliers and the ef-
21 fects of the market pricing program to
22 guard against the occurrence of any nega-
23 tive effects specified in subsection (d)(8).

24 “(ii) PROVIDE TRANSPARENCY OF IN-
25 FORMATION.—The monitoring under

1 clause (i) shall include public availability of
2 the number of suppliers providing market
3 priced items and services in an eligible
4 auction area during each year of the oper-
5 ation of the market pricing program.

6 “(D) BIENNIAL REPORTS TO SEC-
7 RETARY.—The market monitor shall provide bi-
8 annual reports to the Secretary in the initial
9 two years and annually thereafter on the devel-
10 opment and operations of the market pricing
11 program. In each report, the monitor shall—

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

14 “(ii) recommend solutions to problems
15 so identified.

16 “(E) ANNUAL REPORT.—The market mon-
17 itor shall provide an annual report to Congress
18 on the operation and functioning of the market
19 pricing program. Each such report shall include
20 information on—

21 “(i) potential problems with the pro-
22 gram;

23 “(ii) recommended solutions to prob-
24 lems identified pursuant to subclause (I);

1 “(iii) the appropriateness of HCPCS
2 codes selected for auctions;

3 “(iv) an evaluation on the ability of
4 individuals eligible for benefits under this
5 part to obtain items and services subject to
6 the market pricing program;

7 “(v) any adverse health effects result-
8 ing from implementation of the program;

9 “(vi) any material deterioration in the
10 quality of items and services provided
11 under the program;

12 “(vii) the costs of any preventable or
13 prolonged hospitalizations due to lack of
14 timely access to market priced items and
15 services; and

16 “(viii) any negative business con-
17 sequences to the supplier of any market
18 priced items and services occurring as a re-
19 sult of errors made in the conduct of the
20 program.”.

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

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

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

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

6 “(C) ADDITIONAL REPORT TO CON-
7 GRESS.—Not later than 1 year after the date of
8 the appointment of the auction expert under
9 section 1847C(g)(1), the Committee shall sub-
10 mit to the Congress a report on the market
11 pricing program established under section
12 1847C. The report shall include information on
13 the design of the market pricing program, ac-
14 cess to and quality of market priced items and
15 services by beneficiaries under the program.”;

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

18 (4) in paragraph (5), by inserting before the pe-
19 riod at the end the following: “, except that the re-
20 constituted Committee shall terminate 2 years after
21 the date of the appointment of the auction expert
22 and the market monitor under section
23 1847C(g)(1)”.

24 (b) NEGATIVE PRESSURE WOUND THERAPY STAND-
25 ARDS.—The Secretary of Health and Human Services, in

1 consultation with relevant stakeholders (as defined in sec-
2 tion 1847C(e)(2)(A)(ii) of the Social Security Act, as
3 added by section 4), shall develop standards for coverage
4 and quality of negative pressure wound therapy items and
5 services (within the meaning of section
6 1847(a)(1)(D)(i)(IV) of such Act, 42 U.S.C. 1395w-
7 3(a)(1)(D)(i)(IV)).

8 **SEC. 6. ADDITIONAL BUDGETARY OFFSET.**

9 (a) IN GENERAL.—In addition to the payment reduc-
10 tions specified in the amendments made by section
11 3(a)(1), unobligated balances of all discretionary appro-
12 priations for each fiscal year (beginning with fiscal year
13 2013) are hereby rescinded in an amount equal to the
14 amount necessary to make this Act budget neutral for
15 such fiscal year.

16 (b) IMPLEMENTATION.—The Director of the Office of
17 Management and Budget shall determine and identify
18 each account, program, project, and activity to which the
19 rescission under subsection (a) shall apply and the amount
20 of such rescission that shall apply to each such account,
21 program, project and activity. Not later than 60 days after
22 the date of the enactment of this Act, the Director of the
23 Office of Management and Budget shall submit a report
24 to the Secretary of the Treasury and to Congress of the
25 accounts, programs, projects, activities, and amounts de-

1 terminated and identified for rescission under the preceding
2 sentence.

3 (c) EXCEPTION.—This section shall not apply to ac-
4 counts, programs, projects and activities operated by the
5 Department of Defense or the Department of Veteran's
6 Affairs.