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To: [Druckman, Jennifer \(CMS/OL\)](#); [Stieber, Joan \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#); [Yen, Lisa \(CMS/OL\)](#)
Cc: [Street, Amanda](#); [DiBlasio, Carla](#); [Horne, Robert](#)
Subject: DME CB MPP Demo - SECOND TA Request
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Attachments: [DME CB MPP Demo - TA Request .msg](#)
[mpp_001_xml.pdf](#)

We request CMS TA on the attached draft bill that would establish a demonstration that would test an alternative bidding process under the DME competitive bidding program. Consider this a request from Ways & Means, Budget, and Energy & Commerce Republicans. This is the second request from W&M and Budget Republicans, with the first coming on February 6 (see attached e-mail to which we have yet to receive a response—the version of the bill attached to the February 6 e-mail and the version attached to this e-mail are identical). I understand that the first six months of the year have been busy for all but I reiterate the need for TA on the draft bill. We look forward to hearing back from you as soon as possible. Thank you.

Brett

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Attachments: @

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Good morning. Attached is legislative language that would establish a DME competitive bidding market pricing program demonstration project that would run along side the competitive bidding program as the agency is currently implementing it. The goal is to test a different approach to bidding so as to compare the results of each approach. The demo would take place in a subset of competitive bidding areas to minimize disruption and speed implementation. The Committee has worked on the language in conjunction with Rep. Price's office (Amanda and Carla). We request your technical feedback on the draft language as soon as possible. Thanks for your assistance. Please let Amanda, Carla, and I know if you have questions at any point.

Hope all is well.

Brett

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[mpp_001_xml.pdf](#)

(99 KB)

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, 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. ADJUSTMENTS RELATING TO COMPETITIVE**
2 **BIDDING PROGRAMS AND DURABLE MEDICAL**
3 **EQUIPMENT UNDER THE MEDICARE PRO-**
4 **GRAM.**

5 (a) IMPLEMENTATION OF PAYMENT ADJUSTMENTS
6 USING INFORMATION FROM COMPETITIVE BIDDING PRO-
7 GRAMS.—

8 (1) IN GENERAL.—In implementing paragraphs
9 (1) and (2) of section 414.210(g) of title 42, Code
10 of Federal Regulations, the Secretary of Health and
11 Human Services shall provide that the fee schedule
12 for each area (regardless of whether such area is de-
13 fined as rural areas for purposes of such section) is
14 adjusted to the lesser of—

15 (A) 130 percent of the regional price deter-
16 mined under clause (i) of such paragraph (1)
17 for the State in which such area is located (or,
18 in the case of an area located within the Dis-
19 trict of Columbia, for such District); and

20 (B) the fee schedule amount that otherwise
21 would be determined for such area under such
22 section on January 1, 2015, [updated by the
23 covered item update described in section
24 1834(a)(14)(L) of the Social Security Act (42
25 U.S.C. 1395m(a)(14)(L)) for the year in which

1 the items and services to which such fee sched-
2 ule applies are furnished】.

3 (2) PHASE-IN.—The adjustment described in
4 paragraph (1) shall be implemented over a four-year
5 period and in a manner that phases in such adjust-
6 ment in equal increments in each year of such four-
7 year period.

8 (b) BID CEILING FOR COMPETITIVE ACQUISITION
9 FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDI-
10 CARE PROGRAM.—Section 1847(b)(5) of the Social Secu-
11 rity Act (42 U.S.C. 1395w-3(b)(5)) is amended—

12 (1) in subparagraph (A)—

13 (A) by inserting “, subject to subpara-
14 graph (E),” after “subsection (a)(2)”; and

15 (B) by inserting “, subject to subpara-
16 graph (E),” after “Based on such bids”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(E) BID CEILING FOR DURABLE MEDICAL
20 EQUIPMENT.—In the case of covered items (as
21 defined in section 1834(a)(13)) for which pay-
22 ment would otherwise be made under section
23 1834(a) that are furnished with respect to com-
24 petitive bid contracts that begin on or after
25 January 1, 2017, payment under this section

1 for such items may not exceed the amount that
2 would otherwise be paid for such items under
3 section 1834 (without the application of sub-
4 section (a)(1)(F) of such section) if such items
5 and services were furnished on **January 1,**
6 **2015**, **updated by the covered item update**
7 **described in section 1834(a)(14)(L) for the year**
8 **in which such covered item is furnished**.”.

9 **SEC. 2. ESTABLISHMENT OF DMEPOS MARKET-PRICING**
10 **DEMONSTRATION PROJECT.**

11 (a) IN GENERAL.—Part B of title XVIII of the Social
12 Security Act is amended by inserting after section 1847B
13 (42 U.S.C. 1395w–3b) the following new section:

14 “DMEPOS MARKET-PRICING DEMONSTRATION PROJECT

15 “SEC. 1847C. (a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish and implement a market-pricing demonstration
18 project (in this section referred to as the ‘dem-
19 onstration project’) under which auctions are con-
20 ducted in eligible auction areas (as defined in para-
21 graph (4)) throughout the United States for the fur-
22 nishing of market-priced items and services (as de-
23 fined in subsection (b)) for which payment is made
24 under this part. The Secretary shall conduct at least
25 3 rounds of auctions under the demonstration
26 project.

1 “(2) ROLES OF AUCTION EXPERT AND MARKET
2 MONITOR.—The elements of the demonstration
3 project, including eligible auction areas, auction de-
4 sign, establishing of clearing prices, and conduct of
5 auctions, shall be established by the auction expert
6 with input and review by the market monitor under
7 subsection (f). In this section, the terms ‘auction ex-
8 pert’ and ‘market monitor’ refer to the respective
9 auction expert and market monitor contracted with
10 under subsection (f)(1).

11 “(3) IMPLEMENTATION TIMELINE.—The dem-
12 onstration project shall be carried out consistent
13 with the following timeline:

14 “(A) CONTRACTING WITH AUCTION EX-
15 PERT AND MARKET MONITOR.—Not later than
16 3 months after the date of the enactment of
17 this section, the Secretary shall contract with
18 the auction expert and market monitor.

19 “(B) INITIAL DESIGN OF AUCTION.—Not
20 later than 5 months after such date of enact-
21 ment, the initial design of the auction under the
22 project shall be completed.

23 “(C) AUCTION DESIGN CONFERENCE.—
24 Not later than 6 months after such date of en-

1 actment, the Secretary shall hold the auction
2 design conference under subsection (c)(2)(C).

3 “(D) FINALIZING AUCTION DETAILS.—Not
4 later than 7 ½ months after such date of en-
5 actment, the Secretary shall promulgate,
6 through expedited rulemaking under subsection
7 (c)(2)(D), the procedures to be used for auc-
8 tions under the demonstration project.

9 “(E) CONDUCT OF FIRST AUCTION.—Not
10 later than 11 months after such date of enact-
11 ment, the first auction under the demonstration
12 project shall occur under subsection (c)(3).

13 “(F) AWARDING CONTRACTS UNDER FIRST
14 AUCTION.—Not later than 1 year after such
15 date of enactment, contracts under such auction
16 shall be awarded.

17 “(4) ELIGIBLE AUCTION AREAS.—

18 “(A) IN GENERAL.—In this section and
19 section 1834, the term ‘eligible auction areas’
20 means counties, aggregations of counties, or
21 parts of counties, not excluded under subpara-
22 graph (D), as established by the Secretary.

23 “(B) MARKET AREAS MUST REFLECT ECO-
24 NOMIC INTERDEPENDENCY.—In determining
25 and selecting eligible auction areas, the Sec-

1 retary shall choose, from among counties, ag-
2 gregations of counties, or parts of counties,
3 auction areas that form an economically inter-
4 dependent area reflecting standard econometric
5 market models. Nothing in this subparagraph
6 shall preclude the Secretary from subdividing a
7 large county to take into account population
8 and geographic size in establishing auction
9 areas in order to comply with this subpara-
10 graph.

11 “(C) SELECTION OF AUCTION AREAS.—In
12 conducting the demonstration project, the Sec-
13 retary shall select at least 10 eligible auction
14 areas that constituted Round 2 Recompete com-
15 petitive bidding areas under section 1847. To
16 the extent possible areas selected for the dem-
17 onstration project should represent a variety of
18 econometric market models.

19 “(D) EXCLUSION OF CERTAIN AUCTION
20 AREAS.—The Secretary shall not subject areas
21 described in clause (iii) of section
22 1847(a)(1)(D) to market program reimburse-
23 ment rates under the demonstration project be-
24 fore the year specified in such clause.

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

8 “(A) Subparagraph (C) (relating to waiver
9 of certain provisions).

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

19 “(C) Subparagraph (F) (relating to feed-
20 back on missing financial documentation), ex-
21 cept that any reference to a round of a program
22 is deemed a reference to a year of the dem-
23 onstration project.

1 “(b) MARKET-PRICED ITEMS AND SERVICES DE-
2 FINED.—In this section, the term ‘market-priced items
3 and services’ means the following:

4 “(1) Oxygen supplies and equipment.

5 “(2) Standard power wheelchairs, power scoot-
6 ers, and related accessories.

7 “(3) Manual wheelchairs.

8 “(4) Enteral nutrients, equipment, and sup-
9 plies.

10 “(5) Continuous positive airway pressure de-
11 vices, respiratory assistive devices, and related sup-
12 plies.

13 “(6) Hospital beds and related accessories.

14 “(7) Walkers and related accessories.

15 “(8) Support services (Group 2 mattresses and
16 overlays).

17 “(9) Negative pressure wound therapy pumps
18 and related supplies and accessories.

19 “(10) Off-the-shelf orthotics described in sub-
20 paragraph (C) of section 1847(a)(2) to the extent
21 they are included pursuant to such subparagraph in
22 items and services described under such section and
23 included in a competitive bidding program in a com-
24 petitive acquisition area under section 1847(a).

25 “(11) External infusion pumps and supplies.

1 “(12) Other items and services (other than
2 those items and services specified in paragraph (2))
3 that could have been subject to participation in com-
4 petitive acquisition programs under section
5 1847(a)(1).

6 “(c) DEMONSTRATION PRICING PROJECT REQUIRE-
7 MENTS.—

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 selected no later than 11 months after the date of
14 the enactment of this section.

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

17 “(A) TRANSPARENT PROCESS RE-
18 QUIRED.—In establishing such auction design,
19 the Secretary shall utilize an open and trans-
20 parent process that involves all eligible partici-
21 pants described in subparagraph (C)(ii), includ-
22 ing through the auction design conference and
23 other outreach efforts.

24 “(B) INITIAL AUCTION DESIGN.—

1 “(i) IN GENERAL.—Not later than 5
2 months after the date of the enactment of
3 this section, the auction expert shall de-
4 velop an initial auction design that shall
5 propose eligible auction areas to be se-
6 lected for the demonstration project, lead
7 products for each product category, the
8 price index associated with each lead prod-
9 uct, and proposed rules for the conduct of
10 auctions.

11 “(ii) REQUIREMENTS.—In estab-
12 lishing the auction design, the Secretary
13 shall ensure that rates of payment devel-
14 oped through the auction process—

15 “(I) are market-based and based
16 on binding bids and clearing prices;
17 and

18 “(II) do not result in a diminu-
19 tion of access to or quality of market-
20 priced items and services in the eligi-
21 ble auction areas in which the dem-
22 onstration project is conducted.

23 “(C) AUCTION DESIGN CONFERENCE.—

24 “(i) IN GENERAL.—Not later than 6
25 months after the date of the enactment of

1 this section, the Secretary shall convene a
2 design conference (in this paragraph re-
3 ferred to as the ‘design conference’) for the
4 auction process under this section. The
5 auction expert shall chair the conference.

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

9 “(I) MANUFACTURERS, SUP-
10 PLIERS AND TRADE ASSOCIATIONS OF
11 DMEPOS.—Representatives of market-
12 priced items and services.

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

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

20 “(iii) PURPOSE OF CONFERENCE.—
21 The purpose of the design conference shall
22 be to review the initial auction design de-
23 veloped by the auction expert under sub-
24 paragraph (B) for the establishment of an
25 efficient auction consistent with best prac-

1 tices and actuarial science and to provide
2 stakeholders the opportunity to provide
3 feedback on the initial auction design.

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 shall in-
15 vite input from suppliers as to the re-
16 lationship between lead product prices
17 and the value of other products in the
18 category and may establish working
19 committees on major issues;

20 [“(IV) the auction expert shall
21 invite input from small suppliers as to
22 the ways in which the preliminary
23 auction design can be improved to en-
24 sure that small suppliers have the op-

1 opportunity to participate in the auction;
2 and】

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

7 “(D) AUCTION DESIGN PROPOSED
8 THROUGH EXPEDITED RULEMAKING.—

9 “(i) SUBMISSION TO SECRETARY.—
10 Not later than 7½ months after the date
11 of the enactment of this section, the auc-
12 tion expert shall submit to the Secretary
13 an auction design that takes into account
14 the 【feedback on the initial auction design
15 provided at the】 auction conference.

16 “(ii) PUBLICATION AND PROPOSAL.—
17 Upon receiving the submission of the auc-
18 tion design by the auction expert pursuant
19 to clause (i), the Secretary shall publish
20 and propose a rule for implementing such
21 auction design through an expedited rule-
22 making process.

23 “(iii) SUBMISSION OF COMMENTS TO
24 AUCTION EXPERT.—The Secretary shall
25 submit comments received on such design

1 to the auction expert to consider for modi-
2 fication of the auction design.

3 “(iv) DETERMINATION OF CHANGES
4 TO AUCTION DESIGN.—Taking into consid-
5 eration the comments submitted to the
6 auction expert pursuant to clause (iii),
7 such auction expert shall determine if any
8 changes should be made in the proposed
9 auction design in response to such com-
10 ments. If the auction expert determines
11 that changes should be made in such de-
12 sign in response to such comments, the
13 auction expert shall submit to the Sec-
14 retary a revised auction design for promul-
15 gation.

16 “(v) PUBLICATION OF REVISED AUC-
17 TION DESIGN.—The Secretary shall publish
18 by rule the revised auction design de-
19 scribed in clause (iv) unless the Secretary
20 determines and notifies the auction expert
21 and publishes in the Federal Register the
22 reasons for not accepting the changes in
23 the auction design.

24 “(vi) EXPEDITED RULEMAKING PROC-
25 ESS DEFINED.—In this subparagraph, the

1 term ‘expedited rulemaking process’ means
2 a process of publication of the proposed
3 auction design and solicitation of public
4 comments on such design. The provisions
5 of section 1871(b)(1) shall not apply to
6 such process.

7 “(3) CONDUCT OF AUCTION.—

8 “(A) INITIAL AUCTION.—No later than 11
9 months after the date of the enactment of this
10 section, the Secretary shall conduct auctions
11 (each in this section referred to as a ‘market-
12 priced auction’) among entities supplying mar-
13 ket-priced items and services in eligible auction
14 areas that are selected in the auction design
15 and consistent with subsection (a)(3). Market-
16 based auctions shall be conducted in accordance
17 with an auction design promulgated under
18 paragraph (2)(D).

19 “(B) REQUIREMENTS TO SUBMIT BID IN
20 AUCTION.—

21 “(i) SUBMISSION OF BIDS.—Any sup-
22 plier that complies with the requirements
23 of clause (ii) and that is identified by the
24 Secretary pursuant to paragraph (5)(C) as
25 a supplier of a market priced item or serv-

1 ice that is the subject of a market-priced
2 auction in an eligible auction area may
3 submit a bid at such auction.

4 “(ii) LICENSURE REQUIREMENTS AND
5 FINANCIAL ASSURANCES.—The licensure
6 and performance guarantee requirements
7 under section 1847(a)(1)(G) shall apply
8 for purposes of auctions conducted under
9 the demonstration project.

10 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
11 LISHING CLEARING PRICES.—

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

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

23 “(i) LEAD PRODUCT AS REFERENCE
24 POINT FOR OTHER PRODUCTS.—The lead
25 product selected under subparagraph (A)

1 shall be used as a reference point for all
2 other products (categorized by the health
3 care common procedure coding system
4 code) in the same category as the lead
5 product. Such lead product shall be as-
6 signed a weight of 100 percent.

7 “(ii) ADDITIONAL PRODUCTS IN EACH
8 PRODUCT CATEGORY.—Every other prod-
9 uct in the same product category as the
10 lead product identified under subparagraph
11 (A) shall be assigned a weight expressed as
12 a percentage of the lead product, which
13 percentage of the clearing price, estab-
14 lished by the auction expert in the plan de-
15 sign and adjusted after input from pro-
16 viders at the design plan conference, estab-
17 lishes the price of each item and service in
18 the category.

19 “(iii) ESTABLISHING CLEARING PRICE
20 FOR ITEMS AND SERVICES.—The Secretary
21 shall establish the clearing price for each
22 market-priced item and service that is sub-
23 ject to the auction based upon the data
24 submitted under this subparagraph. Such
25 clearing price shall be equal to the highest

1 cost bid that will meet capacity targets in
2 the eligible auction area for such item and
3 service.

4 “(5) CONDUCT OF AUCTION.—

5 “(A) IN GENERAL.—The Secretary shall
6 conduct the market-priced auctions consistent
7 with the provisions of this paragraph.

8 “(B) BEFORE AUCTION DATE.—Before the
9 scheduled auction date, the Secretary shall de-
10 tail auction rules that are consistent with the
11 auction plan developed under this section.
12 These rules shall include the following:

13 “(i) Licensure, bid-bond, and other re-
14 quirements for bidders.

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

17 “(iii) Performance obligations of con-
18 tract suppliers, guarantees, and penalties
19 for nonperformance.

20 “(iv) The lead product established
21 under paragraph (4)(A), the price index
22 (described in paragraph (2)(B)), and the
23 related health care common procedure cod-
24 ing system codes for each product in each
25 category and in each auction area.

1 “(C) BEFORE AUCTION DATE.—Before the
2 scheduled auction date, the Secretary shall re-
3 view all applicants and identify the qualified
4 suppliers eligible to submit bids. In carrying out
5 this subparagraph, the Secretary shall specify
6 the following:

7 “(i) In the case of an eligible bidder
8 with historic capacity in an auction area,
9 the historic capacity for such bidder for
10 each category that will be subject to auc-
11 tion.

12 “(ii) Each bidding supplier that has
13 no historic capacity in an auction area
14 shall be assigned a base capacity for each
15 product category made available under the
16 auction of 1 percent of the total dollar
17 value of that item or service made available
18 in the area.

19 “(iii) Bidder eligibility by eligible auc-
20 tion area.

21 “(D) IMMEDIATELY AFTER EACH AUCTION
22 ROUND.—Immediately after each auction, the
23 Secretary shall announce the remaining aggre-
24 gate supply for the bidders still participating in
25 the auction and the available supply which is

1 being bid for, plus any other relevant informa-
2 tion identified in the design conference.

3 “(E) AT CONCLUSION OF FINAL AUCTION
4 ROUND.—Immediately after the final auction
5 round, the Secretary shall announce the fol-
6 lowing:

7 “(i) A list of winning suppliers.

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

11 “(F) FINAL ACTIONS.—Not later than 1
12 year after the date of the enactment of this sec-
13 tion, the Secretary shall award contracts and
14 adjust the performance guarantees received
15 from each bidder to reflect the outcome of the
16 auction in accordance with paragraph (3)(B).

17 “(6) CONDITIONS OF AWARDING CONTRACT.—

18 “(A) IN GENERAL.—The Secretary shall
19 award a contract to any entity in an eligible
20 auction area in which an auction is conducted
21 and whose bid submitted pursuant to paragraph
22 (3)(A) is at or below the clearing price estab-
23 lished pursuant to paragraph (4)(G)(iii).

24 “(B) TERMS OF CONTRACT.—

1 “(i) MANDATORY ACCEPTANCE OF
2 CONTRACT.—A supplier that submits a bid
3 at or below such clearing price shall be
4 treated as having agreed to and accept the
5 contract awarded pursuant to subpara-
6 graph (A).

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

10 【“(iii) NO REQUIREMENT TO SUPPLY
11 UP TO BID AMOUNT.—Nothing in this sub-
12 section shall require a supplier that is
13 awarded a contract pursuant to subpara-
14 graph (A) to supply a market-priced item
15 or service that is the subject of an auction
16 in the eligible auction area beyond the level
17 of demand for such item or service in the
18 eligible auction area, even if such level is
19 below the level that the supplier assumed
20 in its bid.】

21 “(7) MONITORING ACCESS AND QUALITY.—

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

1 this subsection, including the requirements and
2 obligations established by the auction expert
3 under paragraph (5)(B).

4 “(B) ENFORCEMENT.—If the Secretary,
5 after consultation with the market monitor, de-
6 termines that there has been a material failure
7 of a supplier that has been awarded a contract
8 pursuant to paragraph (6) to comply with such
9 requirements, the Secretary, after consultation
10 with the market monitor, shall implement, con-
11 sistent with subparagraph (C), enforcement
12 measures, which may include the termination of
13 a contract awarded under paragraph (6).

14 “(C) ENFORCEMENT MEASURES.—

15 “(i) WARNING LETTERS AND OPPOR-
16 TUNITY FOR CORRECTIVE ACTION.—The
17 Secretary shall provide for the following
18 before terminating a contract awarded
19 under paragraph (6):

20 “(I) WARNING LETTER.—The
21 Secretary shall issue a formal warning
22 letter at least 90 days before the ter-
23 mination date. The warning letter
24 shall describe the reason (or reasons)
25 for the termination.

1 “(II) OPPORTUNITY FOR COR-
2 RECTIVE ACTION.—The Secretary
3 shall provide an opportunity for the
4 supplier to take corrective action to
5 come into compliance with the con-
6 tract and avoid termination of the
7 contract.

8 “(ii) ADDITIONAL CONSEQUENCES OF
9 TERMINATION.—In the case of a termi-
10 nation of such a contract with a supplier,
11 the Secretary may—

12 “(I) require forfeiture of amounts
13 submitted as a performance deposit
14 pursuant to paragraph (3)(B)(ii); and

15 “(II) terminate the supplier’s
16 agreement to participate in the pro-
17 gram under this title for a period not
18 to exceed 2 years.

19 “(d) APPLICATION OF COMPETITIVE ACQUISITION
20 PROGRAM PROVISIONS.—In implementing the demonstra-
21 tion project under this section, the provisions of section
22 1847(b) shall be applied as follows:

23 “(1) Paragraph (3) shall apply, except that, for
24 purposes of contracts awarded under the demonstra-
25 tion project, subparagraph (B) of such paragraph

1 shall be applied by substituting ‘2 years’ for ‘3
2 years’.

3 “(2) Paragraph (4) shall apply.

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

5 “(A) the reference in subparagraph (A) of
6 such paragraph to subsection (a)(2) is deemed
7 a reference to subsection (b)(1) of this section;
8 and

9 “(B) the reference in subparagraph (B)(i)
10 of such paragraph to subparagraph (A) is
11 deemed a reference to subsection (c)(4) of this
12 section.

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

14 “(5) Paragraph (8) shall apply.

15 “(6) Paragraph (9) shall apply, except that
16 such paragraph shall be applied as if a reference to
17 a bidding program includes a reference to the dem-
18 onstration project.

19 “(7) Paragraph (10) shall apply, except that
20 such paragraph shall be applied as if a reference to
21 a competitive acquisition program includes a ref-
22 erence to the demonstration project.

23 “(8) Paragraph (11) shall not apply, except
24 that—

1 “(A) the pendency of any claim for review
2 under this section shall not delay any auction
3 round conducted pursuant to subsection (a)(3)
4 or (c)(1); and

5 “(B) there shall be no administrative or ju-
6 dicial review of any claim to enjoin the oper-
7 ation of a market-priced auction conducted dur-
8 ing the first round of the demonstration
9 project.

10 “(e) TRANSPARENCY REQUIREMENTS FOR DEM-
11 ONSTRATION PROJECT.—In implementing the demonstra-
12 tion project, the Secretary shall provide for publication,
13 on an Internet Web site operated by the Secretary, the
14 following information:

15 “(1) The qualifications necessary to submit a
16 bid pursuant to subsection (c)(3)(B).

17 “(2) The requirements that are applicable for
18 purposes of subsection (c)(3)(B).

19 “(3) The quality standards and the perform-
20 ance standards developed pursuant to subsection
21 (c)(3)(B).

22 “(4) The calculation of the total market capac-
23 ity of an eligible auction area for purposes of sub-
24 section (c)(5)(C)(i).

1 “(5) The process for soliciting and accepting
2 bids for purposes of paragraphs (3) and (5) of sub-
3 section (c).

4 “(6) For purposes of subsection (c)(5)—

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

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

8 “(C) with respect to rejected bidders, the
9 specific reasons they are not qualified to bid,
10 and, with respect to any such rejection, a
11 means of ensuring the availability of the process
12 of review or appeal.

13 “(7) The calculation of and compliance with the
14 requirement of section 1847(b)(6)(D), as made ap-
15 plicable to the demonstration project by subsection
16 (d).

17 “(f) RELIANCE ON AUCTION EXPERT AND MARKET
18 MONITOR IN ESTABLISHING AND OPERATING MARKET-
19 PRICING DEMONSTRATION PROJECT; ADVISORY COM-
20 MITTEE REPORT AND MONITORING.—

21 “(1) AUCTION EXPERT AND MARKET MON-
22 ITOR.—

23 “(A) IN GENERAL.—The Secretary shall,
24 not later than 3 months after the date of the
25 enactment of this section, through the Office of

1 the Assistant Secretary for Planning and Eval-
2 uation, enter into a contract with an individual
3 to serve as the auction expert and such a con-
4 tract to serve as a market monitor to assist in
5 the design, development, implementation and
6 functioning of the auction to be conducted pur-
7 suant to subsection (b). The auction expert and
8 market monitor shall report and be accountable
9 to the Secretary.

10 “(B) SELECTION OF AUCTION EXPERT
11 AND MARKET MONITOR; TERM; ACCESS TO IN-
12 FORMATION.—

13 “(i) COMPETITIVE PROCESS.—The se-
14 lection of the individual to serve as the
15 auction expert and as a market monitor
16 under subparagraph (A) shall be under-
17 taken through a competitive process.

18 “(ii) DISQUALIFICATIONS.—An indi-
19 vidual may not be selected as the auction
20 expert if such individual—

21 “(I) is a current or former em-
22 ployee of the Centers for Medicare &
23 Medicaid Services;

24 “(II) is a current or former con-
25 tractor for the Centers for Medicare &

1 Medicaid Services that participated in
2 the implementation of the competitive
3 acquisition program under section
4 1847(a);

5 “(III) does not have significant
6 experience in implementing auctions
7 of similar complexity in Government
8 programs; and

9 “(IV) does not have appropriate
10 educational credentials.

11 “(iii) ACCESS TO INFORMATION.—The
12 Secretary shall make available to the auc-
13 tion expert and the market monitor all ap-
14 plicable information (including confidential
15 information) on the relevant markets
16 throughout the duration of the demonstra-
17 tion project.

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

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

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

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

6 “(C) lead the auction, contracting, and
7 other aspects of implementing the demonstra-
8 tion project with the advice of the market mon-
9 itor.

10 “(3) FUNCTIONS OF MARKET MONITOR.—

11 “(A) PARTICIPATE IN DESIGN CON-
12 FERENCE.—The market monitor shall partici-
13 pate in the design conference under subsection
14 (c)(2)(C) and, at the conference, provide a pres-
15 entation on the responsibilities of the market
16 monitor throughout the year and comment on
17 key aspects of the design and their purpose.

18 “(B) REVIEW OF FINAL DESIGN.—The
19 market monitor shall review the final auction
20 design recommendations submitted under sub-
21 section (c)(2)(D) and, within one month of the
22 release of such recommendations, provide public
23 comment on them.

24 “(C) MONITORING.—

1 “(i) IN GENERAL.—The market mon-
2 itor shall provide ongoing monitoring of
3 the performance of suppliers and the ef-
4 fects of the demonstration project to guard
5 against the occurrence of any negative ef-
6 fects specified in subsection (c)(7).

7 “(ii) PROVIDE TRANSPARENCY OF IN-
8 FORMATION.—The monitoring under
9 clause (i) shall include public availability of
10 the number of suppliers providing market-
11 priced items and services in an eligible
12 auction area during each year of the oper-
13 ation of the demonstration project.

14 “(D) SEMIANNUAL REPORTS TO SEC-
15 RETARY.—The market monitor shall provide
16 semiannual reports to the Secretary in the ini-
17 tial two years of the project and annually there-
18 after on the development and operations of the
19 demonstration project. In each report, the mon-
20 itor shall—

21 “(i) identify potential problems with
22 the project; and

23 “(ii) recommend solutions to problems
24 so identified.

1 “(E) ANNUAL REPORT.—The market mon-
2 itor shall submit to the Committees on Ways
3 and Means and Energy and Commerce of the
4 House of Representatives and the Committee
5 on Finance of the Senate an annual report on
6 the operation and functioning of the demonstra-
7 tion project. Each such report shall include in-
8 formation on—

9 “(i) potential problems with the
10 project;

11 “(ii) recommended solutions to prob-
12 lems identified pursuant to clause (i);

13 “(iii) the appropriateness of HCPCS
14 codes selected for auctions;

15 “(iv) an evaluation on the ability of
16 individuals eligible for benefits under this
17 part to obtain items and services subject to
18 the demonstration project;

19 “(v) any adverse health effects result-
20 ing from implementation of the project;

21 “(vi) any material deterioration in the
22 quality of items and services provided
23 under the project;

24 “(vii) the costs of any preventable or
25 prolonged hospitalizations due to lack of

1 timely access to market-priced items and
2 services; and

3 “(viii) any negative business con-
4 sequences to the supplier of any market-
5 priced items and services occurring as a re-
6 sult of errors made in the conduct of the
7 project.”.

8 (b) LICENSURE REQUIREMENTS AND FINANCIAL AS-
9 SURANCES UNDER COMPETITIVE BIDDING.—Section
10 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w-
11 3(a)(1)) is amended by adding at the end the following
12 new subparagraphs:

13 “(G) REQUIRING STATE LICENSURE AND
14 PERFORMANCE GUARANTEES FOR BIDDING EN-
15 TITIES.—With respect to rounds of competi-
16 tions beginning under this subsection on or
17 after the date of enactment of this subpara-
18 graph, the Secretary may not accept a bid from
19 an entity for an area unless, as of the deadline
20 for bid submission—

21 “(i) the entity meets applicable State
22 licensure requirements for such area for all
23 items in such bid for a product category;
24 and

1 “(ii) the entity has submitted a cash
2 deposit as a bid and performance bond in
3 an amount determined by the Secretary
4 after consultation with the auction expert,
5 except that the Secretary may, in the Sec-
6 retary’s sole discretion, accept a letter of
7 credit from a financial institution accept-
8 able to the Secretary in lieu of the cash de-
9 posit required to be submitted under this
10 clause.

11 “(H) TREATMENT OF BID AND PERFORM-
12 ANCE BONDS SUBMITTED.—

13 “(i) FOR SUCCESSFUL BIDDERS.—The
14 Secretary shall retain as a performance
15 guarantee the deposit submitted by a sup-
16 plier that is selected at an auction con-
17 ducted pursuant to subparagraph (G)(ii)
18 and such deposit—

19 “(I) shall be returned to the enti-
20 ty within 90 days of the date of com-
21 pletion of the contract; or

22 “(II) shall be retained by the
23 Secretary if the contract is terminated
24 before the expiration of the contract.

1 “(ii) UNSUCCESSFUL BIDDERS.—If a
2 bidding entity submits a bid that is not ac-
3 cepted for an area, the bid and perform-
4 ance deposit submitted for the entity for
5 such area shall be returned within 90 days
6 of the date of notice of nonacceptance.”.

7 (c) CLARIFICATION ABOUT INDIVIDUAL SELF-AD-
8 JUSTMENT FOR OFF-THE-SHELF ORTHOTICS.—

9 (1) IN GENERAL.—Section 1847(a)(2)(C) of the
10 Social Security Act (42 U.S.C. 1395w-3(a)(2)(C)) is
11 amended—

12 (A) by inserting “furnished to an indi-
13 vidual” after “section 1861(s)(9)”;

14 (B) by inserting after “minimal self-adjust-
15 ment” the following: “by that individual (and
16 not by another person)”; and

17 (C) by striking “to fit to the individual”
18 and inserting “to fit to that individual”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall apply to off-the-shelf
21 orthotics (as defined in section 1847(a)(2)(C) of the
22 Social Security Act, as amended by paragraph (1))
23 furnished in rounds of competitive bidding under
24 section 1847 of such Act initiated on or after such
25 date, as soon as practicable after the date of the en-

1 actment of this Act, as the Secretary of Health and
2 Human Services determines appropriate. Such
3 amendments only apply to the demonstration project
4 under section 1847C of such Act if the Secretary
5 implements competitive bidding for such off-the-shelf
6 orthotics under the competitive bidding program
7 under section 1847 of such Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, 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. ADJUSTMENTS RELATING TO COMPETITIVE**
2 **BIDDING PROGRAMS AND DURABLE MEDICAL**
3 **EQUIPMENT UNDER THE MEDICARE PRO-**
4 **GRAM.**

5 (a) IMPLEMENTATION OF PAYMENT ADJUSTMENTS
6 USING INFORMATION FROM COMPETITIVE BIDDING PRO-
7 GRAMS.—

8 (1) IN GENERAL.—In implementing paragraphs
9 (1) and (2) of section 414.210(g) of title 42, Code
10 of Federal Regulations, the Secretary of Health and
11 Human Services shall provide that the fee schedule
12 for each area (regardless of whether such area is de-
13 fined as rural areas for purposes of such section) is
14 adjusted to the lesser of—

15 (A) 130 percent of the regional price deter-
16 mined under clause (i) of such paragraph (1)
17 for the State in which such area is located (or,
18 in the case of an area located within the Dis-
19 trict of Columbia, for such District); and

20 (B) the fee schedule amount that otherwise
21 would be determined for such area under such
22 section on January 1, 2015, [updated by the
23 covered item update described in section
24 1834(a)(14)(L) of the Social Security Act (42
25 U.S.C. 1395m(a)(14)(L)) for the year in which

1 the items and services to which such fee sched-
2 ule applies are furnished】.

3 (2) PHASE-IN.—The adjustment described in
4 paragraph (1) shall be implemented over a four-year
5 period and in a manner that phases in such adjust-
6 ment in equal increments in each year of such four-
7 year period.

8 (b) BID CEILING FOR COMPETITIVE ACQUISITION
9 FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDI-
10 CARE PROGRAM.—Section 1847(b)(5) of the Social Secu-
11 rity Act (42 U.S.C. 1395w-3(b)(5)) is amended—

12 (1) in subparagraph (A)—

13 (A) by inserting “, subject to subpara-
14 graph (E),” after “subsection (a)(2)”; and

15 (B) by inserting “, subject to subpara-
16 graph (E),” after “Based on such bids”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(E) BID CEILING FOR DURABLE MEDICAL
20 EQUIPMENT.—In the case of covered items (as
21 defined in section 1834(a)(13)) for which pay-
22 ment would otherwise be made under section
23 1834(a) that are furnished with respect to com-
24 petitive bid contracts that begin on or after
25 January 1, 2017, payment under this section

1 for such items may not exceed the amount that
2 would otherwise be paid for such items under
3 section 1834 (without the application of sub-
4 section (a)(1)(F) of such section) if such items
5 and services were furnished on **January 1,**
6 **2015**, **updated by the covered item update**
7 **described in section 1834(a)(14)(L) for the year**
8 **in which such covered item is furnished**.”.

9 **SEC. 2. ESTABLISHMENT OF DMEPOS MARKET-PRICING**
10 **DEMONSTRATION PROJECT.**

11 (a) IN GENERAL.—Part B of title XVIII of the Social
12 Security Act is amended by inserting after section 1847B
13 (42 U.S.C. 1395w–3b) the following new section:

14 “DMEPOS MARKET-PRICING DEMONSTRATION PROJECT

15 “SEC. 1847C. (a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish and implement a market-pricing demonstration
18 project (in this section referred to as the ‘dem-
19 onstration project’) under which auctions are con-
20 ducted in eligible auction areas (as defined in para-
21 graph (4)) throughout the United States for the fur-
22 nishing of market-priced items and services (as de-
23 fined in subsection (b)) for which payment is made
24 under this part. The Secretary shall conduct at least
25 3 rounds of auctions under the demonstration
26 project.

1 “(2) ROLES OF AUCTION EXPERT AND MARKET
2 MONITOR.—The elements of the demonstration
3 project, including eligible auction areas, auction de-
4 sign, establishing of clearing prices, and conduct of
5 auctions, shall be established by the auction expert
6 with input and review by the market monitor under
7 subsection (f). In this section, the terms ‘auction ex-
8 pert’ and ‘market monitor’ refer to the respective
9 auction expert and market monitor contracted with
10 under subsection (f)(1).

11 “(3) IMPLEMENTATION TIMELINE.—The dem-
12 onstration project shall be carried out consistent
13 with the following timeline:

14 “(A) CONTRACTING WITH AUCTION EX-
15 PERT AND MARKET MONITOR.—Not later than
16 3 months after the date of the enactment of
17 this section, the Secretary shall contract with
18 the auction expert and market monitor.

19 “(B) INITIAL DESIGN OF AUCTION.—Not
20 later than 5 months after such date of enact-
21 ment, the initial design of the auction under the
22 project shall be completed.

23 “(C) AUCTION DESIGN CONFERENCE.—
24 Not later than 6 months after such date of en-

1 actment, the Secretary shall hold the auction
2 design conference under subsection (c)(2)(C).

3 “(D) FINALIZING AUCTION DETAILS.—Not
4 later than 7 ½ months after such date of en-
5 actment, the Secretary shall promulgate,
6 through expedited rulemaking under subsection
7 (c)(2)(D), the procedures to be used for auc-
8 tions under the demonstration project.

9 “(E) CONDUCT OF FIRST AUCTION.—Not
10 later than 11 months after such date of enact-
11 ment, the first auction under the demonstration
12 project shall occur under subsection (c)(3).

13 “(F) AWARDING CONTRACTS UNDER FIRST
14 AUCTION.—Not later than 1 year after such
15 date of enactment, contracts under such auction
16 shall be awarded.

17 “(4) ELIGIBLE AUCTION AREAS.—

18 “(A) IN GENERAL.—In this section and
19 section 1834, the term ‘eligible auction areas’
20 means counties, aggregations of counties, or
21 parts of counties, not excluded under subpara-
22 graph (D), as established by the Secretary.

23 “(B) MARKET AREAS MUST REFLECT ECO-
24 NOMIC INTERDEPENDENCY.—In determining
25 and selecting eligible auction areas, the Sec-

1 retary shall choose, from among counties, ag-
2 gregations of counties, or parts of counties,
3 auction areas that form an economically inter-
4 dependent area reflecting standard econometric
5 market models. Nothing in this subparagraph
6 shall preclude the Secretary from subdividing a
7 large county to take into account population
8 and geographic size in establishing auction
9 areas in order to comply with this subpara-
10 graph.

11 “(C) SELECTION OF AUCTION AREAS.—In
12 conducting the demonstration project, the Sec-
13 retary shall select at least 10 eligible auction
14 areas that constituted Round 2 Recompete com-
15 petitive bidding areas under section 1847. To
16 the extent possible areas selected for the dem-
17 onstration project should represent a variety of
18 econometric market models.

19 “(D) EXCLUSION OF CERTAIN AUCTION
20 AREAS.—The Secretary shall not subject areas
21 described in clause (iii) of section
22 1847(a)(1)(D) to market program reimburse-
23 ment rates under the demonstration project be-
24 fore the year specified in such clause.

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

8 “(A) Subparagraph (C) (relating to waiver
9 of certain provisions).

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

19 “(C) Subparagraph (F) (relating to feed-
20 back on missing financial documentation), ex-
21 cept that any reference to a round of a program
22 is deemed a reference to a year of the dem-
23 onstration project.

1 “(b) MARKET-PRICED ITEMS AND SERVICES DE-
2 FINED.—In this section, the term ‘market-priced items
3 and services’ means the following:

4 “(1) Oxygen supplies and equipment.

5 “(2) Standard power wheelchairs, power scoot-
6 ers, and related accessories.

7 “(3) Manual wheelchairs.

8 “(4) Enteral nutrients, equipment, and sup-
9 plies.

10 “(5) Continuous positive airway pressure de-
11 vices, respiratory assistive devices, and related sup-
12 plies.

13 “(6) Hospital beds and related accessories.

14 “(7) Walkers and related accessories.

15 “(8) Support services (Group 2 mattresses and
16 overlays).

17 “(9) Negative pressure wound therapy pumps
18 and related supplies and accessories.

19 “(10) Off-the-shelf orthotics described in sub-
20 paragraph (C) of section 1847(a)(2) to the extent
21 they are included pursuant to such subparagraph in
22 items and services described under such section and
23 included in a competitive bidding program in a com-
24 petitive acquisition area under section 1847(a).

25 “(11) External infusion pumps and supplies.

1 “(12) Other items and services (other than
2 those items and services specified in paragraph (2))
3 that could have been subject to participation in com-
4 petitive acquisition programs under section
5 1847(a)(1).

6 “(c) DEMONSTRATION PRICING PROJECT REQUIRE-
7 MENTS.—

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 selected no later than 11 months after the date of
14 the enactment of this section.

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

17 “(A) TRANSPARENT PROCESS RE-
18 QUIRED.—In establishing such auction design,
19 the Secretary shall utilize an open and trans-
20 parent process that involves all eligible partici-
21 pants described in subparagraph (C)(ii), includ-
22 ing through the auction design conference and
23 other outreach efforts.

24 “(B) INITIAL AUCTION DESIGN.—

1 “(i) IN GENERAL.—Not later than 5
2 months after the date of the enactment of
3 this section, the auction expert shall de-
4 velop an initial auction design that shall
5 propose eligible auction areas to be se-
6 lected for the demonstration project, lead
7 products for each product category, the
8 price index associated with each lead prod-
9 uct, and proposed rules for the conduct of
10 auctions.

11 “(ii) REQUIREMENTS.—In estab-
12 lishing the auction design, the Secretary
13 shall ensure that rates of payment devel-
14 oped through the auction process—

15 “(I) are market-based and based
16 on binding bids and clearing prices;
17 and

18 “(II) do not result in a diminu-
19 tion of access to or quality of market-
20 priced items and services in the eligi-
21 ble auction areas in which the dem-
22 onstration project is conducted.

23 “(C) AUCTION DESIGN CONFERENCE.—

24 “(i) IN GENERAL.—Not later than 6
25 months after the date of the enactment of

1 this section, the Secretary shall convene a
2 design conference (in this paragraph re-
3 ferred to as the ‘design conference’) for the
4 auction process under this section. The
5 auction expert shall chair the conference.

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

9 “(I) MANUFACTURERS, SUP-
10 PLIERS AND TRADE ASSOCIATIONS OF
11 DMEPOS.—Representatives of market-
12 priced items and services.

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

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

20 “(iii) PURPOSE OF CONFERENCE.—
21 The purpose of the design conference shall
22 be to review the initial auction design de-
23 veloped by the auction expert under sub-
24 paragraph (B) for the establishment of an
25 efficient auction consistent with best prac-

1 tices and actuarial science and to provide
2 stakeholders the opportunity to provide
3 feedback on the initial auction design.

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 shall in-
15 vite input from suppliers as to the re-
16 lationship between lead product prices
17 and the value of other products in the
18 category and may establish working
19 committees on major issues;

20 [“(IV) the auction expert shall
21 invite input from small suppliers as to
22 the ways in which the preliminary
23 auction design can be improved to en-
24 sure that small suppliers have the op-

1 portunity to participate in the auction;
2 and】

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

7 “(D) AUCTION DESIGN PROPOSED
8 THROUGH EXPEDITED RULEMAKING.—

9 “(i) SUBMISSION TO SECRETARY.—
10 Not later than 7½ months after the date
11 of the enactment of this section, the auc-
12 tion expert shall submit to the Secretary
13 an auction design that takes into account
14 the 【feedback on the initial auction design
15 provided at the】 auction conference.

16 “(ii) PUBLICATION AND PROPOSAL.—
17 Upon receiving the submission of the auc-
18 tion design by the auction expert pursuant
19 to clause (i), the Secretary shall publish
20 and propose a rule for implementing such
21 auction design through an expedited rule-
22 making process.

23 “(iii) SUBMISSION OF COMMENTS TO
24 AUCTION EXPERT.—The Secretary shall
25 submit comments received on such design

1 to the auction expert to consider for modi-
2 fication of the auction design.

3 “(iv) DETERMINATION OF CHANGES
4 TO AUCTION DESIGN.—Taking into consid-
5 eration the comments submitted to the
6 auction expert pursuant to clause (iii),
7 such auction expert shall determine if any
8 changes should be made in the proposed
9 auction design in response to such com-
10 ments. If the auction expert determines
11 that changes should be made in such de-
12 sign in response to such comments, the
13 auction expert shall submit to the Sec-
14 retary a revised auction design for promul-
15 gation.

16 “(v) PUBLICATION OF REVISED AUC-
17 TION DESIGN.—The Secretary shall publish
18 by rule the revised auction design de-
19 scribed in clause (iv) unless the Secretary
20 determines and notifies the auction expert
21 and publishes in the Federal Register the
22 reasons for not accepting the changes in
23 the auction design.

24 “(vi) EXPEDITED RULEMAKING PROC-
25 ESS DEFINED.—In this subparagraph, the

1 term ‘expedited rulemaking process’ means
2 a process of publication of the proposed
3 auction design and solicitation of public
4 comments on such design. The provisions
5 of section 1871(b)(1) shall not apply to
6 such process.

7 “(3) CONDUCT OF AUCTION.—

8 “(A) INITIAL AUCTION.—No later than 11
9 months after the date of the enactment of this
10 section, the Secretary shall conduct auctions
11 (each in this section referred to as a ‘market-
12 priced auction’) among entities supplying mar-
13 ket-priced items and services in eligible auction
14 areas that are selected in the auction design
15 and consistent with subsection (a)(3). Market-
16 based auctions shall be conducted in accordance
17 with an auction design promulgated under
18 paragraph (2)(D).

19 “(B) REQUIREMENTS TO SUBMIT BID IN
20 AUCTION.—

21 “(i) SUBMISSION OF BIDS.—Any sup-
22 plier that complies with the requirements
23 of clause (ii) and that is identified by the
24 Secretary pursuant to paragraph (5)(C) as
25 a supplier of a market priced item or serv-

1 ice that is the subject of a market-priced
2 auction in an eligible auction area may
3 submit a bid at such auction.

4 “(ii) LICENSURE REQUIREMENTS AND
5 FINANCIAL ASSURANCES.—The licensure
6 and performance guarantee requirements
7 under section 1847(a)(1)(G) shall apply
8 for purposes of auctions conducted under
9 the demonstration project.

10 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
11 LISHING CLEARING PRICES.—

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

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

23 “(i) LEAD PRODUCT AS REFERENCE
24 POINT FOR OTHER PRODUCTS.—The lead
25 product selected under subparagraph (A)

1 shall be used as a reference point for all
2 other products (categorized by the health
3 care common procedure coding system
4 code) in the same category as the lead
5 product. Such lead product shall be as-
6 signed a weight of 100 percent.

7 “(ii) ADDITIONAL PRODUCTS IN EACH
8 PRODUCT CATEGORY.—Every other prod-
9 uct in the same product category as the
10 lead product identified under subparagraph
11 (A) shall be assigned a weight expressed as
12 a percentage of the lead product, which
13 percentage of the clearing price, estab-
14 lished by the auction expert in the plan de-
15 sign and adjusted after input from pro-
16 viders at the design plan conference, estab-
17 lishes the price of each item and service in
18 the category.

19 “(iii) ESTABLISHING CLEARING PRICE
20 FOR ITEMS AND SERVICES.—The Secretary
21 shall establish the clearing price for each
22 market-priced item and service that is sub-
23 ject to the auction based upon the data
24 submitted under this subparagraph. Such
25 clearing price shall be equal to the highest

1 cost bid that will meet capacity targets in
2 the eligible auction area for such item and
3 service.

4 “(5) CONDUCT OF AUCTION.—

5 “(A) IN GENERAL.—The Secretary shall
6 conduct the market-priced auctions consistent
7 with the provisions of this paragraph.

8 “(B) BEFORE AUCTION DATE.—Before the
9 scheduled auction date, the Secretary shall de-
10 tail auction rules that are consistent with the
11 auction plan developed under this section.
12 These rules shall include the following:

13 “(i) Licensure, bid-bond, and other re-
14 quirements for bidders.

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

17 “(iii) Performance obligations of con-
18 tract suppliers, guarantees, and penalties
19 for nonperformance.

20 “(iv) The lead product established
21 under paragraph (4)(A), the price index
22 (described in paragraph (2)(B)), and the
23 related health care common procedure cod-
24 ing system codes for each product in each
25 category and in each auction area.

1 “(C) BEFORE AUCTION DATE.—Before the
2 scheduled auction date, the Secretary shall re-
3 view all applicants and identify the qualified
4 suppliers eligible to submit bids. In carrying out
5 this subparagraph, the Secretary shall specify
6 the following:

7 “(i) In the case of an eligible bidder
8 with historic capacity in an auction area,
9 the historic capacity for such bidder for
10 each category that will be subject to auc-
11 tion.

12 “(ii) Each bidding supplier that has
13 no historic capacity in an auction area
14 shall be assigned a base capacity for each
15 product category made available under the
16 auction of 1 percent of the total dollar
17 value of that item or service made available
18 in the area.

19 “(iii) Bidder eligibility by eligible auc-
20 tion area.

21 “(D) IMMEDIATELY AFTER EACH AUCTION
22 ROUND.—Immediately after each auction, the
23 Secretary shall announce the remaining aggre-
24 gate supply for the bidders still participating in
25 the auction and the available supply which is

1 being bid for, plus any other relevant informa-
2 tion identified in the design conference.

3 “(E) AT CONCLUSION OF FINAL AUCTION
4 ROUND.—Immediately after the final auction
5 round, the Secretary shall announce the fol-
6 lowing:

7 “(i) A list of winning suppliers.

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

11 “(F) FINAL ACTIONS.—Not later than 1
12 year after the date of the enactment of this sec-
13 tion, the Secretary shall award contracts and
14 adjust the performance guarantees received
15 from each bidder to reflect the outcome of the
16 auction in accordance with paragraph (3)(B).

17 “(6) CONDITIONS OF AWARDING CONTRACT.—

18 “(A) IN GENERAL.—The Secretary shall
19 award a contract to any entity in an eligible
20 auction area in which an auction is conducted
21 and whose bid submitted pursuant to paragraph
22 (3)(A) is at or below the clearing price estab-
23 lished pursuant to paragraph (4)(G)(iii).

24 “(B) TERMS OF CONTRACT.—

1 “(i) MANDATORY ACCEPTANCE OF
2 CONTRACT.—A supplier that submits a bid
3 at or below such clearing price shall be
4 treated as having agreed to and accept the
5 contract awarded pursuant to subpara-
6 graph (A).

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

10 【“(iii) NO REQUIREMENT TO SUPPLY
11 UP TO BID AMOUNT.—Nothing in this sub-
12 section shall require a supplier that is
13 awarded a contract pursuant to subpara-
14 graph (A) to supply a market-priced item
15 or service that is the subject of an auction
16 in the eligible auction area beyond the level
17 of demand for such item or service in the
18 eligible auction area, even if such level is
19 below the level that the supplier assumed
20 in its bid.】

21 “(7) MONITORING ACCESS AND QUALITY.—

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

1 this subsection, including the requirements and
2 obligations established by the auction expert
3 under paragraph (5)(B).

4 “(B) ENFORCEMENT.—If the Secretary,
5 after consultation with the market monitor, de-
6 termines that there has been a material failure
7 of a supplier that has been awarded a contract
8 pursuant to paragraph (6) to comply with such
9 requirements, the Secretary, after consultation
10 with the market monitor, shall implement, con-
11 sistent with subparagraph (C), enforcement
12 measures, which may include the termination of
13 a contract awarded under paragraph (6).

14 “(C) ENFORCEMENT MEASURES.—

15 “(i) WARNING LETTERS AND OPPOR-
16 TUNITY FOR CORRECTIVE ACTION.—The
17 Secretary shall provide for the following
18 before terminating a contract awarded
19 under paragraph (6):

20 “(I) WARNING LETTER.—The
21 Secretary shall issue a formal warning
22 letter at least 90 days before the ter-
23 mination date. The warning letter
24 shall describe the reason (or reasons)
25 for the termination.

1 “(II) OPPORTUNITY FOR COR-
2 RECTIVE ACTION.—The Secretary
3 shall provide an opportunity for the
4 supplier to take corrective action to
5 come into compliance with the con-
6 tract and avoid termination of the
7 contract.

8 “(ii) ADDITIONAL CONSEQUENCES OF
9 TERMINATION.—In the case of a termi-
10 nation of such a contract with a supplier,
11 the Secretary may—

12 “(I) require forfeiture of amounts
13 submitted as a performance deposit
14 pursuant to paragraph (3)(B)(ii); and

15 “(II) terminate the supplier’s
16 agreement to participate in the pro-
17 gram under this title for a period not
18 to exceed 2 years.

19 “(d) APPLICATION OF COMPETITIVE ACQUISITION
20 PROGRAM PROVISIONS.—In implementing the demonstra-
21 tion project under this section, the provisions of section
22 1847(b) shall be applied as follows:

23 “(1) Paragraph (3) shall apply, except that, for
24 purposes of contracts awarded under the demonstra-
25 tion project, subparagraph (B) of such paragraph

1 shall be applied by substituting ‘2 years’ for ‘3
2 years’.

3 “(2) Paragraph (4) shall apply.

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

5 “(A) the reference in subparagraph (A) of
6 such paragraph to subsection (a)(2) is deemed
7 a reference to subsection (b)(1) of this section;
8 and

9 “(B) the reference in subparagraph (B)(i)
10 of such paragraph to subparagraph (A) is
11 deemed a reference to subsection (c)(4) of this
12 section.

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

14 “(5) Paragraph (8) shall apply.

15 “(6) Paragraph (9) shall apply, except that
16 such paragraph shall be applied as if a reference to
17 a bidding program includes a reference to the dem-
18 onstration project.

19 “(7) Paragraph (10) shall apply, except that
20 such paragraph shall be applied as if a reference to
21 a competitive acquisition program includes a ref-
22 erence to the demonstration project.

23 “(8) Paragraph (11) shall not apply, except
24 that—

1 “(A) the pendency of any claim for review
2 under this section shall not delay any auction
3 round conducted pursuant to subsection (a)(3)
4 or (c)(1); and

5 “(B) there shall be no administrative or ju-
6 dicial review of any claim to enjoin the oper-
7 ation of a market-priced auction conducted dur-
8 ing the first round of the demonstration
9 project.

10 “(e) TRANSPARENCY REQUIREMENTS FOR DEM-
11 ONSTRATION PROJECT.—In implementing the demonstra-
12 tion project, the Secretary shall provide for publication,
13 on an Internet Web site operated by the Secretary, the
14 following information:

15 “(1) The qualifications necessary to submit a
16 bid pursuant to subsection (c)(3)(B).

17 “(2) The requirements that are applicable for
18 purposes of subsection (c)(3)(B).

19 “(3) The quality standards and the perform-
20 ance standards developed pursuant to subsection
21 (c)(3)(B).

22 “(4) The calculation of the total market capac-
23 ity of an eligible auction area for purposes of sub-
24 section (c)(5)(C)(i).

1 “(5) The process for soliciting and accepting
2 bids for purposes of paragraphs (3) and (5) of sub-
3 section (c).

4 “(6) For purposes of subsection (c)(5)—

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

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

8 “(C) with respect to rejected bidders, the
9 specific reasons they are not qualified to bid,
10 and, with respect to any such rejection, a
11 means of ensuring the availability of the process
12 of review or appeal.

13 “(7) The calculation of and compliance with the
14 requirement of section 1847(b)(6)(D), as made ap-
15 plicable to the demonstration project by subsection
16 (d).

17 “(f) RELIANCE ON AUCTION EXPERT AND MARKET
18 MONITOR IN ESTABLISHING AND OPERATING MARKET-
19 PRICING DEMONSTRATION PROJECT; ADVISORY COM-
20 MITTEE REPORT AND MONITORING.—

21 “(1) AUCTION EXPERT AND MARKET MON-
22 ITOR.—

23 “(A) IN GENERAL.—The Secretary shall,
24 not later than 3 months after the date of the
25 enactment of this section, through the Office of

1 the Assistant Secretary for Planning and Eval-
2 uation, enter into a contract with an individual
3 to serve as the auction expert and such a con-
4 tract to serve as a market monitor to assist in
5 the design, development, implementation and
6 functioning of the auction to be conducted pur-
7 suant to subsection (b). The auction expert and
8 market monitor shall report and be accountable
9 to the Secretary.

10 “(B) SELECTION OF AUCTION EXPERT
11 AND MARKET MONITOR; TERM; ACCESS TO IN-
12 FORMATION.—

13 “(i) COMPETITIVE PROCESS.—The se-
14 lection of the individual to serve as the
15 auction expert and as a market monitor
16 under subparagraph (A) shall be under-
17 taken through a competitive process.

18 “(ii) DISQUALIFICATIONS.—An indi-
19 vidual may not be selected as the auction
20 expert if such individual—

21 “(I) is a current or former em-
22 ployee of the Centers for Medicare &
23 Medicaid Services;

24 “(II) is a current or former con-
25 tractor for the Centers for Medicare &

1 Medicaid Services that participated in
2 the implementation of the competitive
3 acquisition program under section
4 1847(a);

5 “(III) does not have significant
6 experience in implementing auctions
7 of similar complexity in Government
8 programs; and

9 “(IV) does not have appropriate
10 educational credentials.

11 “(iii) ACCESS TO INFORMATION.—The
12 Secretary shall make available to the auc-
13 tion expert and the market monitor all ap-
14 plicable information (including confidential
15 information) on the relevant markets
16 throughout the duration of the demonstra-
17 tion project.

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

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

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

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

6 “(C) lead the auction, contracting, and
7 other aspects of implementing the demonstra-
8 tion project with the advice of the market mon-
9 itor.

10 “(3) FUNCTIONS OF MARKET MONITOR.—

11 “(A) PARTICIPATE IN DESIGN CON-
12 FERENCE.—The market monitor shall partici-
13 pate in the design conference under subsection
14 (c)(2)(C) and, at the conference, provide a pres-
15 entation on the responsibilities of the market
16 monitor throughout the year and comment on
17 key aspects of the design and their purpose.

18 “(B) REVIEW OF FINAL DESIGN.—The
19 market monitor shall review the final auction
20 design recommendations submitted under sub-
21 section (c)(2)(D) and, within one month of the
22 release of such recommendations, provide public
23 comment on them.

24 “(C) MONITORING.—

1 “(i) IN GENERAL.—The market mon-
2 itor shall provide ongoing monitoring of
3 the performance of suppliers and the ef-
4 fects of the demonstration project to guard
5 against the occurrence of any negative ef-
6 fects specified in subsection (c)(7).

7 “(ii) PROVIDE TRANSPARENCY OF IN-
8 FORMATION.—The monitoring under
9 clause (i) shall include public availability of
10 the number of suppliers providing market-
11 priced items and services in an eligible
12 auction area during each year of the oper-
13 ation of the demonstration project.

14 “(D) SEMIANNUAL REPORTS TO SEC-
15 RETARY.—The market monitor shall provide
16 semiannual reports to the Secretary in the ini-
17 tial two years of the project and annually there-
18 after on the development and operations of the
19 demonstration project. In each report, the mon-
20 itor shall—

21 “(i) identify potential problems with
22 the project; and

23 “(ii) recommend solutions to problems
24 so identified.

1 “(E) ANNUAL REPORT.—The market mon-
2 itor shall submit to the Committees on Ways
3 and Means and Energy and Commerce of the
4 House of Representatives and the Committee
5 on Finance of the Senate an annual report on
6 the operation and functioning of the demonstra-
7 tion project. Each such report shall include in-
8 formation on—

9 “(i) potential problems with the
10 project;

11 “(ii) recommended solutions to prob-
12 lems identified pursuant to clause (i);

13 “(iii) the appropriateness of HCPCS
14 codes selected for auctions;

15 “(iv) an evaluation on the ability of
16 individuals eligible for benefits under this
17 part to obtain items and services subject to
18 the demonstration project;

19 “(v) any adverse health effects result-
20 ing from implementation of the project;

21 “(vi) any material deterioration in the
22 quality of items and services provided
23 under the project;

24 “(vii) the costs of any preventable or
25 prolonged hospitalizations due to lack of

1 timely access to market-priced items and
2 services; and

3 “(viii) any negative business con-
4 sequences to the supplier of any market-
5 priced items and services occurring as a re-
6 sult of errors made in the conduct of the
7 project.”.

8 (b) LICENSURE REQUIREMENTS AND FINANCIAL AS-
9 SURANCES UNDER COMPETITIVE BIDDING.—Section
10 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w-
11 3(a)(1)) is amended by adding at the end the following
12 new subparagraphs:

13 “(G) REQUIRING STATE LICENSURE AND
14 PERFORMANCE GUARANTEES FOR BIDDING EN-
15 TITIES.—With respect to rounds of competi-
16 tions beginning under this subsection on or
17 after the date of enactment of this subpara-
18 graph, the Secretary may not accept a bid from
19 an entity for an area unless, as of the deadline
20 for bid submission—

21 “(i) the entity meets applicable State
22 licensure requirements for such area for all
23 items in such bid for a product category;
24 and

1 “(ii) the entity has submitted a cash
2 deposit as a bid and performance bond in
3 an amount determined by the Secretary
4 after consultation with the auction expert,
5 except that the Secretary may, in the Sec-
6 retary’s sole discretion, accept a letter of
7 credit from a financial institution accept-
8 able to the Secretary in lieu of the cash de-
9 posit required to be submitted under this
10 clause.

11 “(H) TREATMENT OF BID AND PERFORM-
12 ANCE BONDS SUBMITTED.—

13 “(i) FOR SUCCESSFUL BIDDERS.—The
14 Secretary shall retain as a performance
15 guarantee the deposit submitted by a sup-
16 plier that is selected at an auction con-
17 ducted pursuant to subparagraph (G)(ii)
18 and such deposit—

19 “(I) shall be returned to the enti-
20 ty within 90 days of the date of com-
21 pletion of the contract; or

22 “(II) shall be retained by the
23 Secretary if the contract is terminated
24 before the expiration of the contract.

1 “(ii) UNSUCCESSFUL BIDDERS.—If a
2 bidding entity submits a bid that is not ac-
3 cepted for an area, the bid and perform-
4 ance deposit submitted for the entity for
5 such area shall be returned within 90 days
6 of the date of notice of nonacceptance.”.

7 (c) CLARIFICATION ABOUT INDIVIDUAL SELF-AD-
8 JUSTMENT FOR OFF-THE-SHELF ORTHOTICS.—

9 (1) IN GENERAL.—Section 1847(a)(2)(C) of the
10 Social Security Act (42 U.S.C. 1395w-3(a)(2)(C)) is
11 amended—

12 (A) by inserting “furnished to an indi-
13 vidual” after “section 1861(s)(9)”;

14 (B) by inserting after “minimal self-adjust-
15 ment” the following: “by that individual (and
16 not by another person)”; and

17 (C) by striking “to fit to the individual”
18 and inserting “to fit to that individual”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall apply to off-the-shelf
21 orthotics (as defined in section 1847(a)(2)(C) of the
22 Social Security Act, as amended by paragraph (1))
23 furnished in rounds of competitive bidding under
24 section 1847 of such Act initiated on or after such
25 date, as soon as practicable after the date of the en-

1 actment of this Act, as the Secretary of Health and
2 Human Services determines appropriate. Such
3 amendments only apply to the demonstration project
4 under section 1847C of such Act if the Secretary
5 implements competitive bidding for such off-the-shelf
6 orthotics under the competitive bidding program
7 under section 1847 of such Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, 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. ADJUSTMENTS RELATING TO COMPETITIVE**
2 **BIDDING PROGRAMS AND DURABLE MEDICAL**
3 **EQUIPMENT UNDER THE MEDICARE PRO-**
4 **GRAM.**

5 (a) IMPLEMENTATION OF PAYMENT ADJUSTMENTS
6 USING INFORMATION FROM COMPETITIVE BIDDING PRO-
7 GRAMS.—

8 (1) IN GENERAL.—In implementing paragraphs
9 (1) and (2) of section 414.210(g) of title 42, Code
10 of Federal Regulations, the Secretary of Health and
11 Human Services shall provide that the fee schedule
12 for each area (regardless of whether such area is de-
13 fined as rural areas for purposes of such section) is
14 adjusted to the lesser of—

15 (A) 130 percent of the regional price deter-
16 mined under clause (i) of such paragraph (1)
17 for the State in which such area is located (or,
18 in the case of an area located within the Dis-
19 trict of Columbia, for such District); and

20 (B) the fee schedule amount that otherwise
21 would be determined for such area under such
22 section on January 1, 2015, [updated by the
23 covered item update described in section
24 1834(a)(14)(L) of the Social Security Act (42
25 U.S.C. 1395m(a)(14)(L)) for the year in which

1 the items and services to which such fee sched-
2 ule applies are furnished】.

3 (2) PHASE-IN.—The adjustment described in
4 paragraph (1) shall be implemented over a four-year
5 period and in a manner that phases in such adjust-
6 ment in equal increments in each year of such four-
7 year period.

8 (b) BID CEILING FOR COMPETITIVE ACQUISITION
9 FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDI-
10 CARE PROGRAM.—Section 1847(b)(5) of the Social Secu-
11 rity Act (42 U.S.C. 1395w-3(b)(5)) is amended—

12 (1) in subparagraph (A)—

13 (A) by inserting “, subject to subpara-
14 graph (E),” after “subsection (a)(2)”; and

15 (B) by inserting “, subject to subpara-
16 graph (E),” after “Based on such bids”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(E) BID CEILING FOR DURABLE MEDICAL
20 EQUIPMENT.—In the case of covered items (as
21 defined in section 1834(a)(13)) for which pay-
22 ment would otherwise be made under section
23 1834(a) that are furnished with respect to com-
24 petitive bid contracts that begin on or after
25 January 1, 2017, payment under this section

1 for such items may not exceed the amount that
2 would otherwise be paid for such items under
3 section 1834 (without the application of sub-
4 section (a)(1)(F) of such section) if such items
5 and services were furnished on **January 1,**
6 **2015**, **updated by the covered item update**
7 **described in section 1834(a)(14)(L) for the year**
8 **in which such covered item is furnished**.”.

9 **SEC. 2. ESTABLISHMENT OF DMEPOS MARKET-PRICING**
10 **DEMONSTRATION PROJECT.**

11 (a) IN GENERAL.—Part B of title XVIII of the Social
12 Security Act is amended by inserting after section 1847B
13 (42 U.S.C. 1395w–3b) the following new section:

14 “DMEPOS MARKET-PRICING DEMONSTRATION PROJECT

15 “SEC. 1847C. (a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish and implement a market-pricing demonstration
18 project (in this section referred to as the ‘dem-
19 onstration project’) under which auctions are con-
20 ducted in eligible auction areas (as defined in para-
21 graph (4)) throughout the United States for the fur-
22 nishing of market-priced items and services (as de-
23 fined in subsection (b)) for which payment is made
24 under this part. The Secretary shall conduct at least
25 3 rounds of auctions under the demonstration
26 project.

1 “(2) ROLES OF AUCTION EXPERT AND MARKET
2 MONITOR.—The elements of the demonstration
3 project, including eligible auction areas, auction de-
4 sign, establishing of clearing prices, and conduct of
5 auctions, shall be established by the auction expert
6 with input and review by the market monitor under
7 subsection (f). In this section, the terms ‘auction ex-
8 pert’ and ‘market monitor’ refer to the respective
9 auction expert and market monitor contracted with
10 under subsection (f)(1).

11 “(3) IMPLEMENTATION TIMELINE.—The dem-
12 onstration project shall be carried out consistent
13 with the following timeline:

14 “(A) CONTRACTING WITH AUCTION EX-
15 PERT AND MARKET MONITOR.—Not later than
16 3 months after the date of the enactment of
17 this section, the Secretary shall contract with
18 the auction expert and market monitor.

19 “(B) INITIAL DESIGN OF AUCTION.—Not
20 later than 5 months after such date of enact-
21 ment, the initial design of the auction under the
22 project shall be completed.

23 “(C) AUCTION DESIGN CONFERENCE.—
24 Not later than 6 months after such date of en-

1 actment, the Secretary shall hold the auction
2 design conference under subsection (c)(2)(C).

3 “(D) FINALIZING AUCTION DETAILS.—Not
4 later than 7 ½ months after such date of en-
5 actment, the Secretary shall promulgate,
6 through expedited rulemaking under subsection
7 (c)(2)(D), the procedures to be used for auc-
8 tions under the demonstration project.

9 “(E) CONDUCT OF FIRST AUCTION.—Not
10 later than 11 months after such date of enact-
11 ment, the first auction under the demonstration
12 project shall occur under subsection (c)(3).

13 “(F) AWARDING CONTRACTS UNDER FIRST
14 AUCTION.—Not later than 1 year after such
15 date of enactment, contracts under such auction
16 shall be awarded.

17 “(4) ELIGIBLE AUCTION AREAS.—

18 “(A) IN GENERAL.—In this section and
19 section 1834, the term ‘eligible auction areas’
20 means counties, aggregations of counties, or
21 parts of counties, not excluded under subpara-
22 graph (D), as established by the Secretary.

23 “(B) MARKET AREAS MUST REFLECT ECO-
24 NOMIC INTERDEPENDENCY.—In determining
25 and selecting eligible auction areas, the Sec-

1 retary shall choose, from among counties, ag-
2 gregations of counties, or parts of counties,
3 auction areas that form an economically inter-
4 dependent area reflecting standard econometric
5 market models. Nothing in this subparagraph
6 shall preclude the Secretary from subdividing a
7 large county to take into account population
8 and geographic size in establishing auction
9 areas in order to comply with this subpara-
10 graph.

11 “(C) SELECTION OF AUCTION AREAS.—In
12 conducting the demonstration project, the Sec-
13 retary shall select at least 10 eligible auction
14 areas that constituted Round 2 Recompete com-
15 petitive bidding areas under section 1847. To
16 the extent possible areas selected for the dem-
17 onstration project should represent a variety of
18 econometric market models.

19 “(D) EXCLUSION OF CERTAIN AUCTION
20 AREAS.—The Secretary shall not subject areas
21 described in clause (iii) of section
22 1847(a)(1)(D) to market program reimburse-
23 ment rates under the demonstration project be-
24 fore the year specified in such clause.

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

8 “(A) Subparagraph (C) (relating to waiver
9 of certain provisions).

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

19 “(C) Subparagraph (F) (relating to feed-
20 back on missing financial documentation), ex-
21 cept that any reference to a round of a program
22 is deemed a reference to a year of the dem-
23 onstration project.

1 “(b) MARKET-PRICED ITEMS AND SERVICES DE-
2 FINED.—In this section, the term ‘market-priced items
3 and services’ means the following:

4 “(1) Oxygen supplies and equipment.

5 “(2) Standard power wheelchairs, power scoot-
6 ers, and related accessories.

7 “(3) Manual wheelchairs.

8 “(4) Enteral nutrients, equipment, and sup-
9 plies.

10 “(5) Continuous positive airway pressure de-
11 vices, respiratory assistive devices, and related sup-
12 plies.

13 “(6) Hospital beds and related accessories.

14 “(7) Walkers and related accessories.

15 “(8) Support services (Group 2 mattresses and
16 overlays).

17 “(9) Negative pressure wound therapy pumps
18 and related supplies and accessories.

19 “(10) Off-the-shelf orthotics described in sub-
20 paragraph (C) of section 1847(a)(2) to the extent
21 they are included pursuant to such subparagraph in
22 items and services described under such section and
23 included in a competitive bidding program in a com-
24 petitive acquisition area under section 1847(a).

25 “(11) External infusion pumps and supplies.

1 “(12) Other items and services (other than
2 those items and services specified in paragraph (2))
3 that could have been subject to participation in com-
4 petitive acquisition programs under section
5 1847(a)(1).

6 “(c) DEMONSTRATION PRICING PROJECT REQUIRE-
7 MENTS.—

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 selected no later than 11 months after the date of
14 the enactment of this section.

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

17 “(A) TRANSPARENT PROCESS RE-
18 QUIRED.—In establishing such auction design,
19 the Secretary shall utilize an open and trans-
20 parent process that involves all eligible partici-
21 pants described in subparagraph (C)(ii), includ-
22 ing through the auction design conference and
23 other outreach efforts.

24 “(B) INITIAL AUCTION DESIGN.—

1 “(i) IN GENERAL.—Not later than 5
2 months after the date of the enactment of
3 this section, the auction expert shall de-
4 velop an initial auction design that shall
5 propose eligible auction areas to be se-
6 lected for the demonstration project, lead
7 products for each product category, the
8 price index associated with each lead prod-
9 uct, and proposed rules for the conduct of
10 auctions.

11 “(ii) REQUIREMENTS.—In estab-
12 lishing the auction design, the Secretary
13 shall ensure that rates of payment devel-
14 oped through the auction process—

15 “(I) are market-based and based
16 on binding bids and clearing prices;
17 and

18 “(II) do not result in a diminu-
19 tion of access to or quality of market-
20 priced items and services in the eligi-
21 ble auction areas in which the dem-
22 onstration project is conducted.

23 “(C) AUCTION DESIGN CONFERENCE.—

24 “(i) IN GENERAL.—Not later than 6
25 months after the date of the enactment of

1 this section, the Secretary shall convene a
2 design conference (in this paragraph re-
3 ferred to as the ‘design conference’) for the
4 auction process under this section. The
5 auction expert shall chair the conference.

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

9 “(I) MANUFACTURERS, SUP-
10 PLIERS AND TRADE ASSOCIATIONS OF
11 DMEPOS.—Representatives of market-
12 priced items and services.

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

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

20 “(iii) PURPOSE OF CONFERENCE.—
21 The purpose of the design conference shall
22 be to review the initial auction design de-
23 veloped by the auction expert under sub-
24 paragraph (B) for the establishment of an
25 efficient auction consistent with best prac-

1 tices and actuarial science and to provide
2 stakeholders the opportunity to provide
3 feedback on the initial auction design.

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 shall in-
15 vite input from suppliers as to the re-
16 lationship between lead product prices
17 and the value of other products in the
18 category and may establish working
19 committees on major issues;

20 [“(IV) the auction expert shall
21 invite input from small suppliers as to
22 the ways in which the preliminary
23 auction design can be improved to en-
24 sure that small suppliers have the op-

1 portunity to participate in the auction;
2 and】

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

7 “(D) AUCTION DESIGN PROPOSED
8 THROUGH EXPEDITED RULEMAKING.—

9 “(i) SUBMISSION TO SECRETARY.—
10 Not later than 7½ months after the date
11 of the enactment of this section, the auc-
12 tion expert shall submit to the Secretary
13 an auction design that takes into account
14 the 【feedback on the initial auction design
15 provided at the】 auction conference.

16 “(ii) PUBLICATION AND PROPOSAL.—
17 Upon receiving the submission of the auc-
18 tion design by the auction expert pursuant
19 to clause (i), the Secretary shall publish
20 and propose a rule for implementing such
21 auction design through an expedited rule-
22 making process.

23 “(iii) SUBMISSION OF COMMENTS TO
24 AUCTION EXPERT.—The Secretary shall
25 submit comments received on such design

1 to the auction expert to consider for modi-
2 fication of the auction design.

3 “(iv) DETERMINATION OF CHANGES
4 TO AUCTION DESIGN.—Taking into consid-
5 eration the comments submitted to the
6 auction expert pursuant to clause (iii),
7 such auction expert shall determine if any
8 changes should be made in the proposed
9 auction design in response to such com-
10 ments. If the auction expert determines
11 that changes should be made in such de-
12 sign in response to such comments, the
13 auction expert shall submit to the Sec-
14 retary a revised auction design for promul-
15 gation.

16 “(v) PUBLICATION OF REVISED AUC-
17 TION DESIGN.—The Secretary shall publish
18 by rule the revised auction design de-
19 scribed in clause (iv) unless the Secretary
20 determines and notifies the auction expert
21 and publishes in the Federal Register the
22 reasons for not accepting the changes in
23 the auction design.

24 “(vi) EXPEDITED RULEMAKING PROC-
25 ESS DEFINED.—In this subparagraph, the

1 term ‘expedited rulemaking process’ means
2 a process of publication of the proposed
3 auction design and solicitation of public
4 comments on such design. The provisions
5 of section 1871(b)(1) shall not apply to
6 such process.

7 “(3) CONDUCT OF AUCTION.—

8 “(A) INITIAL AUCTION.—No later than 11
9 months after the date of the enactment of this
10 section, the Secretary shall conduct auctions
11 (each in this section referred to as a ‘market-
12 priced auction’) among entities supplying mar-
13 ket-priced items and services in eligible auction
14 areas that are selected in the auction design
15 and consistent with subsection (a)(3). Market-
16 based auctions shall be conducted in accordance
17 with an auction design promulgated under
18 paragraph (2)(D).

19 “(B) REQUIREMENTS TO SUBMIT BID IN
20 AUCTION.—

21 “(i) SUBMISSION OF BIDS.—Any sup-
22 plier that complies with the requirements
23 of clause (ii) and that is identified by the
24 Secretary pursuant to paragraph (5)(C) as
25 a supplier of a market priced item or serv-

1 ice that is the subject of a market-priced
2 auction in an eligible auction area may
3 submit a bid at such auction.

4 “(ii) LICENSURE REQUIREMENTS AND
5 FINANCIAL ASSURANCES.—The licensure
6 and performance guarantee requirements
7 under section 1847(a)(1)(G) shall apply
8 for purposes of auctions conducted under
9 the demonstration project.

10 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
11 LISHING CLEARING PRICES.—

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

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

23 “(i) LEAD PRODUCT AS REFERENCE
24 POINT FOR OTHER PRODUCTS.—The lead
25 product selected under subparagraph (A)

1 shall be used as a reference point for all
2 other products (categorized by the health
3 care common procedure coding system
4 code) in the same category as the lead
5 product. Such lead product shall be as-
6 signed a weight of 100 percent.

7 “(ii) ADDITIONAL PRODUCTS IN EACH
8 PRODUCT CATEGORY.—Every other prod-
9 uct in the same product category as the
10 lead product identified under subparagraph
11 (A) shall be assigned a weight expressed as
12 a percentage of the lead product, which
13 percentage of the clearing price, estab-
14 lished by the auction expert in the plan de-
15 sign and adjusted after input from pro-
16 viders at the design plan conference, estab-
17 lishes the price of each item and service in
18 the category.

19 “(iii) ESTABLISHING CLEARING PRICE
20 FOR ITEMS AND SERVICES.—The Secretary
21 shall establish the clearing price for each
22 market-priced item and service that is sub-
23 ject to the auction based upon the data
24 submitted under this subparagraph. Such
25 clearing price shall be equal to the highest

1 cost bid that will meet capacity targets in
2 the eligible auction area for such item and
3 service.

4 “(5) CONDUCT OF AUCTION.—

5 “(A) IN GENERAL.—The Secretary shall
6 conduct the market-priced auctions consistent
7 with the provisions of this paragraph.

8 “(B) BEFORE AUCTION DATE.—Before the
9 scheduled auction date, the Secretary shall de-
10 tail auction rules that are consistent with the
11 auction plan developed under this section.
12 These rules shall include the following:

13 “(i) Licensure, bid-bond, and other re-
14 quirements for bidders.

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

17 “(iii) Performance obligations of con-
18 tract suppliers, guarantees, and penalties
19 for nonperformance.

20 “(iv) The lead product established
21 under paragraph (4)(A), the price index
22 (described in paragraph (2)(B)), and the
23 related health care common procedure cod-
24 ing system codes for each product in each
25 category and in each auction area.

1 “(C) BEFORE AUCTION DATE.—Before the
2 scheduled auction date, the Secretary shall re-
3 view all applicants and identify the qualified
4 suppliers eligible to submit bids. In carrying out
5 this subparagraph, the Secretary shall specify
6 the following:

7 “(i) In the case of an eligible bidder
8 with historic capacity in an auction area,
9 the historic capacity for such bidder for
10 each category that will be subject to auc-
11 tion.

12 “(ii) Each bidding supplier that has
13 no historic capacity in an auction area
14 shall be assigned a base capacity for each
15 product category made available under the
16 auction of 1 percent of the total dollar
17 value of that item or service made available
18 in the area.

19 “(iii) Bidder eligibility by eligible auc-
20 tion area.

21 “(D) IMMEDIATELY AFTER EACH AUCTION
22 ROUND.—Immediately after each auction, the
23 Secretary shall announce the remaining aggre-
24 gate supply for the bidders still participating in
25 the auction and the available supply which is

1 being bid for, plus any other relevant informa-
2 tion identified in the design conference.

3 “(E) AT CONCLUSION OF FINAL AUCTION
4 ROUND.—Immediately after the final auction
5 round, the Secretary shall announce the fol-
6 lowing:

7 “(i) A list of winning suppliers.

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

11 “(F) FINAL ACTIONS.—Not later than 1
12 year after the date of the enactment of this sec-
13 tion, the Secretary shall award contracts and
14 adjust the performance guarantees received
15 from each bidder to reflect the outcome of the
16 auction in accordance with paragraph (3)(B).

17 “(6) CONDITIONS OF AWARDING CONTRACT.—

18 “(A) IN GENERAL.—The Secretary shall
19 award a contract to any entity in an eligible
20 auction area in which an auction is conducted
21 and whose bid submitted pursuant to paragraph
22 (3)(A) is at or below the clearing price estab-
23 lished pursuant to paragraph (4)(G)(iii).

24 “(B) TERMS OF CONTRACT.—

1 “(i) MANDATORY ACCEPTANCE OF
2 CONTRACT.—A supplier that submits a bid
3 at or below such clearing price shall be
4 treated as having agreed to and accept the
5 contract awarded pursuant to subpara-
6 graph (A).

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

10 【“(iii) NO REQUIREMENT TO SUPPLY
11 UP TO BID AMOUNT.—Nothing in this sub-
12 section shall require a supplier that is
13 awarded a contract pursuant to subpara-
14 graph (A) to supply a market-priced item
15 or service that is the subject of an auction
16 in the eligible auction area beyond the level
17 of demand for such item or service in the
18 eligible auction area, even if such level is
19 below the level that the supplier assumed
20 in its bid.】

21 “(7) MONITORING ACCESS AND QUALITY.—

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

1 this subsection, including the requirements and
2 obligations established by the auction expert
3 under paragraph (5)(B).

4 “(B) ENFORCEMENT.—If the Secretary,
5 after consultation with the market monitor, de-
6 termines that there has been a material failure
7 of a supplier that has been awarded a contract
8 pursuant to paragraph (6) to comply with such
9 requirements, the Secretary, after consultation
10 with the market monitor, shall implement, con-
11 sistent with subparagraph (C), enforcement
12 measures, which may include the termination of
13 a contract awarded under paragraph (6).

14 “(C) ENFORCEMENT MEASURES.—

15 “(i) WARNING LETTERS AND OPPOR-
16 TUNITY FOR CORRECTIVE ACTION.—The
17 Secretary shall provide for the following
18 before terminating a contract awarded
19 under paragraph (6):

20 “(I) WARNING LETTER.—The
21 Secretary shall issue a formal warning
22 letter at least 90 days before the ter-
23 mination date. The warning letter
24 shall describe the reason (or reasons)
25 for the termination.

1 “(II) OPPORTUNITY FOR COR-
2 RECTIVE ACTION.—The Secretary
3 shall provide an opportunity for the
4 supplier to take corrective action to
5 come into compliance with the con-
6 tract and avoid termination of the
7 contract.

8 “(ii) ADDITIONAL CONSEQUENCES OF
9 TERMINATION.—In the case of a termi-
10 nation of such a contract with a supplier,
11 the Secretary may—

12 “(I) require forfeiture of amounts
13 submitted as a performance deposit
14 pursuant to paragraph (3)(B)(ii); and

15 “(II) terminate the supplier’s
16 agreement to participate in the pro-
17 gram under this title for a period not
18 to exceed 2 years.

19 “(d) APPLICATION OF COMPETITIVE ACQUISITION
20 PROGRAM PROVISIONS.—In implementing the demonstra-
21 tion project under this section, the provisions of section
22 1847(b) shall be applied as follows:

23 “(1) Paragraph (3) shall apply, except that, for
24 purposes of contracts awarded under the demonstra-
25 tion project, subparagraph (B) of such paragraph

1 shall be applied by substituting ‘2 years’ for ‘3
2 years’.

3 “(2) Paragraph (4) shall apply.

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

5 “(A) the reference in subparagraph (A) of
6 such paragraph to subsection (a)(2) is deemed
7 a reference to subsection (b)(1) of this section;
8 and

9 “(B) the reference in subparagraph (B)(i)
10 of such paragraph to subparagraph (A) is
11 deemed a reference to subsection (c)(4) of this
12 section.

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

14 “(5) Paragraph (8) shall apply.

15 “(6) Paragraph (9) shall apply, except that
16 such paragraph shall be applied as if a reference to
17 a bidding program includes a reference to the dem-
18 onstration project.

19 “(7) Paragraph (10) shall apply, except that
20 such paragraph shall be applied as if a reference to
21 a competitive acquisition program includes a ref-
22 erence to the demonstration project.

23 “(8) Paragraph (11) shall not apply, except
24 that—

1 “(A) the pendency of any claim for review
2 under this section shall not delay any auction
3 round conducted pursuant to subsection (a)(3)
4 or (c)(1); and

5 “(B) there shall be no administrative or ju-
6 dicial review of any claim to enjoin the oper-
7 ation of a market-priced auction conducted dur-
8 ing the first round of the demonstration
9 project.

10 “(e) TRANSPARENCY REQUIREMENTS FOR DEM-
11 ONSTRATION PROJECT.—In implementing the demonstra-
12 tion project, the Secretary shall provide for publication,
13 on an Internet Web site operated by the Secretary, the
14 following information:

15 “(1) The qualifications necessary to submit a
16 bid pursuant to subsection (c)(3)(B).

17 “(2) The requirements that are applicable for
18 purposes of subsection (c)(3)(B).

19 “(3) The quality standards and the perform-
20 ance standards developed pursuant to subsection
21 (c)(3)(B).

22 “(4) The calculation of the total market capac-
23 ity of an eligible auction area for purposes of sub-
24 section (c)(5)(C)(i).

1 “(5) The process for soliciting and accepting
2 bids for purposes of paragraphs (3) and (5) of sub-
3 section (c).

4 “(6) For purposes of subsection (c)(5)—

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

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

8 “(C) with respect to rejected bidders, the
9 specific reasons they are not qualified to bid,
10 and, with respect to any such rejection, a
11 means of ensuring the availability of the process
12 of review or appeal.

13 “(7) The calculation of and compliance with the
14 requirement of section 1847(b)(6)(D), as made ap-
15 plicable to the demonstration project by subsection
16 (d).

17 “(f) RELIANCE ON AUCTION EXPERT AND MARKET
18 MONITOR IN ESTABLISHING AND OPERATING MARKET-
19 PRICING DEMONSTRATION PROJECT; ADVISORY COM-
20 MITTEE REPORT AND MONITORING.—

21 “(1) AUCTION EXPERT AND MARKET MON-
22 ITOR.—

23 “(A) IN GENERAL.—The Secretary shall,
24 not later than 3 months after the date of the
25 enactment of this section, through the Office of

1 the Assistant Secretary for Planning and Eval-
2 uation, enter into a contract with an individual
3 to serve as the auction expert and such a con-
4 tract to serve as a market monitor to assist in
5 the design, development, implementation and
6 functioning of the auction to be conducted pur-
7 suant to subsection (b). The auction expert and
8 market monitor shall report and be accountable
9 to the Secretary.

10 “(B) SELECTION OF AUCTION EXPERT
11 AND MARKET MONITOR; TERM; ACCESS TO IN-
12 FORMATION.—

13 “(i) COMPETITIVE PROCESS.—The se-
14 lection of the individual to serve as the
15 auction expert and as a market monitor
16 under subparagraph (A) shall be under-
17 taken through a competitive process.

18 “(ii) DISQUALIFICATIONS.—An indi-
19 vidual may not be selected as the auction
20 expert if such individual—

21 “(I) is a current or former em-
22 ployee of the Centers for Medicare &
23 Medicaid Services;

24 “(II) is a current or former con-
25 tractor for the Centers for Medicare &

1 Medicaid Services that participated in
2 the implementation of the competitive
3 acquisition program under section
4 1847(a);

5 “(III) does not have significant
6 experience in implementing auctions
7 of similar complexity in Government
8 programs; and

9 “(IV) does not have appropriate
10 educational credentials.

11 “(iii) ACCESS TO INFORMATION.—The
12 Secretary shall make available to the auc-
13 tion expert and the market monitor all ap-
14 plicable information (including confidential
15 information) on the relevant markets
16 throughout the duration of the demonstra-
17 tion project.

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

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

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

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

6 “(C) lead the auction, contracting, and
7 other aspects of implementing the demonstra-
8 tion project with the advice of the market mon-
9 itor.

10 “(3) FUNCTIONS OF MARKET MONITOR.—

11 “(A) PARTICIPATE IN DESIGN CON-
12 FERENCE.—The market monitor shall partici-
13 pate in the design conference under subsection
14 (c)(2)(C) and, at the conference, provide a pres-
15 entation on the responsibilities of the market
16 monitor throughout the year and comment on
17 key aspects of the design and their purpose.

18 “(B) REVIEW OF FINAL DESIGN.—The
19 market monitor shall review the final auction
20 design recommendations submitted under sub-
21 section (c)(2)(D) and, within one month of the
22 release of such recommendations, provide public
23 comment on them.

24 “(C) MONITORING.—

1 “(i) IN GENERAL.—The market mon-
2 itor shall provide ongoing monitoring of
3 the performance of suppliers and the ef-
4 fects of the demonstration project to guard
5 against the occurrence of any negative ef-
6 fects specified in subsection (c)(7).

7 “(ii) PROVIDE TRANSPARENCY OF IN-
8 FORMATION.—The monitoring under
9 clause (i) shall include public availability of
10 the number of suppliers providing market-
11 priced items and services in an eligible
12 auction area during each year of the oper-
13 ation of the demonstration project.

14 “(D) SEMIANNUAL REPORTS TO SEC-
15 RETARY.—The market monitor shall provide
16 semiannual reports to the Secretary in the ini-
17 tial two years of the project and annually there-
18 after on the development and operations of the
19 demonstration project. In each report, the mon-
20 itor shall—

21 “(i) identify potential problems with
22 the project; and

23 “(ii) recommend solutions to problems
24 so identified.

1 “(E) ANNUAL REPORT.—The market mon-
2 itor shall submit to the Committees on Ways
3 and Means and Energy and Commerce of the
4 House of Representatives and the Committee
5 on Finance of the Senate an annual report on
6 the operation and functioning of the demonstra-
7 tion project. Each such report shall include in-
8 formation on—

9 “(i) potential problems with the
10 project;

11 “(ii) recommended solutions to prob-
12 lems identified pursuant to clause (i);

13 “(iii) the appropriateness of HCPCS
14 codes selected for auctions;

15 “(iv) an evaluation on the ability of
16 individuals eligible for benefits under this
17 part to obtain items and services subject to
18 the demonstration project;

19 “(v) any adverse health effects result-
20 ing from implementation of the project;

21 “(vi) any material deterioration in the
22 quality of items and services provided
23 under the project;

24 “(vii) the costs of any preventable or
25 prolonged hospitalizations due to lack of

1 timely access to market-priced items and
2 services; and

3 “(viii) any negative business con-
4 sequences to the supplier of any market-
5 priced items and services occurring as a re-
6 sult of errors made in the conduct of the
7 project.”.

8 (b) LICENSURE REQUIREMENTS AND FINANCIAL AS-
9 SURANCES UNDER COMPETITIVE BIDDING.—Section
10 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w-
11 3(a)(1)) is amended by adding at the end the following
12 new subparagraphs:

13 “(G) REQUIRING STATE LICENSURE AND
14 PERFORMANCE GUARANTEES FOR BIDDING EN-
15 TITIES.—With respect to rounds of competi-
16 tions beginning under this subsection on or
17 after the date of enactment of this subpara-
18 graph, the Secretary may not accept a bid from
19 an entity for an area unless, as of the deadline
20 for bid submission—

21 “(i) the entity meets applicable State
22 licensure requirements for such area for all
23 items in such bid for a product category;
24 and

1 “(ii) the entity has submitted a cash
2 deposit as a bid and performance bond in
3 an amount determined by the Secretary
4 after consultation with the auction expert,
5 except that the Secretary may, in the Sec-
6 retary’s sole discretion, accept a letter of
7 credit from a financial institution accept-
8 able to the Secretary in lieu of the cash de-
9 posit required to be submitted under this
10 clause.

11 “(H) TREATMENT OF BID AND PERFORM-
12 ANCE BONDS SUBMITTED.—

13 “(i) FOR SUCCESSFUL BIDDERS.—The
14 Secretary shall retain as a performance
15 guarantee the deposit submitted by a sup-
16 plier that is selected at an auction con-
17 ducted pursuant to subparagraph (G)(ii)
18 and such deposit—

19 “(I) shall be returned to the enti-
20 ty within 90 days of the date of com-
21 pletion of the contract; or

22 “(II) shall be retained by the
23 Secretary if the contract is terminated
24 before the expiration of the contract.

1 “(ii) UNSUCCESSFUL BIDDERS.—If a
2 bidding entity submits a bid that is not ac-
3 cepted for an area, the bid and perform-
4 ance deposit submitted for the entity for
5 such area shall be returned within 90 days
6 of the date of notice of nonacceptance.”.

7 (c) CLARIFICATION ABOUT INDIVIDUAL SELF-AD-
8 JUSTMENT FOR OFF-THE-SHELF ORTHOTICS.—

9 (1) IN GENERAL.—Section 1847(a)(2)(C) of the
10 Social Security Act (42 U.S.C. 1395w-3(a)(2)(C)) is
11 amended—

12 (A) by inserting “furnished to an indi-
13 vidual” after “section 1861(s)(9)”;

14 (B) by inserting after “minimal self-adjust-
15 ment” the following: “by that individual (and
16 not by another person)”; and

17 (C) by striking “to fit to the individual”
18 and inserting “to fit to that individual”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall apply to off-the-shelf
21 orthotics (as defined in section 1847(a)(2)(C) of the
22 Social Security Act, as amended by paragraph (1))
23 furnished in rounds of competitive bidding under
24 section 1847 of such Act initiated on or after such
25 date, as soon as practicable after the date of the en-

1 actment of this Act, as the Secretary of Health and
2 Human Services determines appropriate. Such
3 amendments only apply to the demonstration project
4 under section 1847C of such Act if the Secretary
5 implements competitive bidding for such off-the-shelf
6 orthotics under the competitive bidding program
7 under section 1847 of such Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, 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. ADJUSTMENTS RELATING TO COMPETITIVE**
2 **BIDDING PROGRAMS AND DURABLE MEDICAL**
3 **EQUIPMENT UNDER THE MEDICARE PRO-**
4 **GRAM.**

5 (a) IMPLEMENTATION OF PAYMENT ADJUSTMENTS
6 USING INFORMATION FROM COMPETITIVE BIDDING PRO-
7 GRAMS.—

8 (1) IN GENERAL.—In implementing paragraphs
9 (1) and (2) of section 414.210(g) of title 42, Code
10 of Federal Regulations, the Secretary of Health and
11 Human Services shall provide that the fee schedule
12 for each area (regardless of whether such area is de-
13 fined as rural areas for purposes of such section) is
14 adjusted to the lesser of—

15 (A) 130 percent of the regional price deter-
16 mined under clause (i) of such paragraph (1)
17 for the State in which such area is located (or,
18 in the case of an area located within the Dis-
19 trict of Columbia, for such District); and

20 (B) the fee schedule amount that otherwise
21 would be determined for such area under such
22 section on January 1, 2015, [updated by the
23 covered item update described in section
24 1834(a)(14)(L) of the Social Security Act (42
25 U.S.C. 1395m(a)(14)(L)) for the year in which

1 the items and services to which such fee sched-
2 ule applies are furnished】.

3 (2) PHASE-IN.—The adjustment described in
4 paragraph (1) shall be implemented over a four-year
5 period and in a manner that phases in such adjust-
6 ment in equal increments in each year of such four-
7 year period.

8 (b) BID CEILING FOR COMPETITIVE ACQUISITION
9 FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDI-
10 CARE PROGRAM.—Section 1847(b)(5) of the Social Secu-
11 rity Act (42 U.S.C. 1395w-3(b)(5)) is amended—

12 (1) in subparagraph (A)—

13 (A) by inserting “, subject to subpara-
14 graph (E),” after “subsection (a)(2)”; and

15 (B) by inserting “, subject to subpara-
16 graph (E),” after “Based on such bids”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(E) BID CEILING FOR DURABLE MEDICAL
20 EQUIPMENT.—In the case of covered items (as
21 defined in section 1834(a)(13)) for which pay-
22 ment would otherwise be made under section
23 1834(a) that are furnished with respect to com-
24 petitive bid contracts that begin on or after
25 January 1, 2017, payment under this section

1 for such items may not exceed the amount that
2 would otherwise be paid for such items under
3 section 1834 (without the application of sub-
4 section (a)(1)(F) of such section) if such items
5 and services were furnished on **January 1,**
6 **2015**, **updated by the covered item update**
7 **described in section 1834(a)(14)(L) for the year**
8 **in which such covered item is furnished**.”.

9 **SEC. 2. ESTABLISHMENT OF DMEPOS MARKET-PRICING**
10 **DEMONSTRATION PROJECT.**

11 (a) IN GENERAL.—Part B of title XVIII of the Social
12 Security Act is amended by inserting after section 1847B
13 (42 U.S.C. 1395w–3b) the following new section:

14 “DMEPOS MARKET-PRICING DEMONSTRATION PROJECT

15 “SEC. 1847C. (a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish and implement a market-pricing demonstration
18 project (in this section referred to as the ‘dem-
19 onstration project’) under which auctions are con-
20 ducted in eligible auction areas (as defined in para-
21 graph (4)) throughout the United States for the fur-
22 nishing of market-priced items and services (as de-
23 fined in subsection (b)) for which payment is made
24 under this part. The Secretary shall conduct at least
25 3 rounds of auctions under the demonstration
26 project.

1 “(2) ROLES OF AUCTION EXPERT AND MARKET
2 MONITOR.—The elements of the demonstration
3 project, including eligible auction areas, auction de-
4 sign, establishing of clearing prices, and conduct of
5 auctions, shall be established by the auction expert
6 with input and review by the market monitor under
7 subsection (f). In this section, the terms ‘auction ex-
8 pert’ and ‘market monitor’ refer to the respective
9 auction expert and market monitor contracted with
10 under subsection (f)(1).

11 “(3) IMPLEMENTATION TIMELINE.—The dem-
12 onstration project shall be carried out consistent
13 with the following timeline:

14 “(A) CONTRACTING WITH AUCTION EX-
15 PERT AND MARKET MONITOR.—Not later than
16 3 months after the date of the enactment of
17 this section, the Secretary shall contract with
18 the auction expert and market monitor.

19 “(B) INITIAL DESIGN OF AUCTION.—Not
20 later than 5 months after such date of enact-
21 ment, the initial design of the auction under the
22 project shall be completed.

23 “(C) AUCTION DESIGN CONFERENCE.—
24 Not later than 6 months after such date of en-

1 actment, the Secretary shall hold the auction
2 design conference under subsection (c)(2)(C).

3 “(D) FINALIZING AUCTION DETAILS.—Not
4 later than 7 ½ months after such date of en-
5 actment, the Secretary shall promulgate,
6 through expedited rulemaking under subsection
7 (c)(2)(D), the procedures to be used for auc-
8 tions under the demonstration project.

9 “(E) CONDUCT OF FIRST AUCTION.—Not
10 later than 11 months after such date of enact-
11 ment, the first auction under the demonstration
12 project shall occur under subsection (c)(3).

13 “(F) AWARDING CONTRACTS UNDER FIRST
14 AUCTION.—Not later than 1 year after such
15 date of enactment, contracts under such auction
16 shall be awarded.

17 “(4) ELIGIBLE AUCTION AREAS.—

18 “(A) IN GENERAL.—In this section and
19 section 1834, the term ‘eligible auction areas’
20 means counties, aggregations of counties, or
21 parts of counties, not excluded under subpara-
22 graph (D), as established by the Secretary.

23 “(B) MARKET AREAS MUST REFLECT ECO-
24 NOMIC INTERDEPENDENCY.—In determining
25 and selecting eligible auction areas, the Sec-

1 retary shall choose, from among counties, ag-
2 gregations of counties, or parts of counties,
3 auction areas that form an economically inter-
4 dependent area reflecting standard econometric
5 market models. Nothing in this subparagraph
6 shall preclude the Secretary from subdividing a
7 large county to take into account population
8 and geographic size in establishing auction
9 areas in order to comply with this subpara-
10 graph.

11 “(C) SELECTION OF AUCTION AREAS.—In
12 conducting the demonstration project, the Sec-
13 retary shall select at least 10 eligible auction
14 areas that constituted Round 2 Recompete com-
15 petitive bidding areas under section 1847. To
16 the extent possible areas selected for the dem-
17 onstration project should represent a variety of
18 econometric market models.

19 “(D) EXCLUSION OF CERTAIN AUCTION
20 AREAS.—The Secretary shall not subject areas
21 described in clause (iii) of section
22 1847(a)(1)(D) to market program reimburse-
23 ment rates under the demonstration project be-
24 fore the year specified in such clause.

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

8 “(A) Subparagraph (C) (relating to waiver
9 of certain provisions).

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

19 “(C) Subparagraph (F) (relating to feed-
20 back on missing financial documentation), ex-
21 cept that any reference to a round of a program
22 is deemed a reference to a year of the dem-
23 onstration project.

1 “(b) MARKET-PRICED ITEMS AND SERVICES DE-
2 FINED.—In this section, the term ‘market-priced items
3 and services’ means the following:

4 “(1) Oxygen supplies and equipment.

5 “(2) Standard power wheelchairs, power scoot-
6 ers, and related accessories.

7 “(3) Manual wheelchairs.

8 “(4) Enteral nutrients, equipment, and sup-
9 plies.

10 “(5) Continuous positive airway pressure de-
11 vices, respiratory assistive devices, and related sup-
12 plies.

13 “(6) Hospital beds and related accessories.

14 “(7) Walkers and related accessories.

15 “(8) Support services (Group 2 mattresses and
16 overlays).

17 “(9) Negative pressure wound therapy pumps
18 and related supplies and accessories.

19 “(10) Off-the-shelf orthotics described in sub-
20 paragraph (C) of section 1847(a)(2) to the extent
21 they are included pursuant to such subparagraph in
22 items and services described under such section and
23 included in a competitive bidding program in a com-
24 petitive acquisition area under section 1847(a).

25 “(11) External infusion pumps and supplies.

1 “(12) Other items and services (other than
2 those items and services specified in paragraph (2))
3 that could have been subject to participation in com-
4 petitive acquisition programs under section
5 1847(a)(1).

6 “(c) DEMONSTRATION PRICING PROJECT REQUIRE-
7 MENTS.—

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 selected no later than 11 months after the date of
14 the enactment of this section.

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

17 “(A) TRANSPARENT PROCESS RE-
18 QUIRED.—In establishing such auction design,
19 the Secretary shall utilize an open and trans-
20 parent process that involves all eligible partici-
21 pants described in subparagraph (C)(ii), includ-
22 ing through the auction design conference and
23 other outreach efforts.

24 “(B) INITIAL AUCTION DESIGN.—

1 “(i) IN GENERAL.—Not later than 5
2 months after the date of the enactment of
3 this section, the auction expert shall de-
4 velop an initial auction design that shall
5 propose eligible auction areas to be se-
6 lected for the demonstration project, lead
7 products for each product category, the
8 price index associated with each lead prod-
9 uct, and proposed rules for the conduct of
10 auctions.

11 “(ii) REQUIREMENTS.—In estab-
12 lishing the auction design, the Secretary
13 shall ensure that rates of payment devel-
14 oped through the auction process—

15 “(I) are market-based and based
16 on binding bids and clearing prices;
17 and

18 “(II) do not result in a diminu-
19 tion of access to or quality of market-
20 priced items and services in the eligi-
21 ble auction areas in which the dem-
22 onstration project is conducted.

23 “(C) AUCTION DESIGN CONFERENCE.—

24 “(i) IN GENERAL.—Not later than 6
25 months after the date of the enactment of

1 this section, the Secretary shall convene a
2 design conference (in this paragraph re-
3 ferred to as the ‘design conference’) for the
4 auction process under this section. The
5 auction expert shall chair the conference.

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

9 “(I) MANUFACTURERS, SUP-
10 PLIERS AND TRADE ASSOCIATIONS OF
11 DMEPOS.—Representatives of market-
12 priced items and services.

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

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

20 “(iii) PURPOSE OF CONFERENCE.—
21 The purpose of the design conference shall
22 be to review the initial auction design de-
23 veloped by the auction expert under sub-
24 paragraph (B) for the establishment of an
25 efficient auction consistent with best prac-

1 tices and actuarial science and to provide
2 stakeholders the opportunity to provide
3 feedback on the initial auction design.

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 shall in-
15 vite input from suppliers as to the re-
16 lationship between lead product prices
17 and the value of other products in the
18 category and may establish working
19 committees on major issues;

20 [“(IV) the auction expert shall
21 invite input from small suppliers as to
22 the ways in which the preliminary
23 auction design can be improved to en-
24 sure that small suppliers have the op-

1 opportunity to participate in the auction;
2 and】

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

7 “(D) AUCTION DESIGN PROPOSED
8 THROUGH EXPEDITED RULEMAKING.—

9 “(i) SUBMISSION TO SECRETARY.—
10 Not later than 7½ months after the date
11 of the enactment of this section, the auc-
12 tion expert shall submit to the Secretary
13 an auction design that takes into account
14 the 【feedback on the initial auction design
15 provided at the】 auction conference.

16 “(ii) PUBLICATION AND PROPOSAL.—
17 Upon receiving the submission of the auc-
18 tion design by the auction expert pursuant
19 to clause (i), the Secretary shall publish
20 and propose a rule for implementing such
21 auction design through an expedited rule-
22 making process.

23 “(iii) SUBMISSION OF COMMENTS TO
24 AUCTION EXPERT.—The Secretary shall
25 submit comments received on such design

1 to the auction expert to consider for modi-
2 fication of the auction design.

3 “(iv) DETERMINATION OF CHANGES
4 TO AUCTION DESIGN.—Taking into consid-
5 eration the comments submitted to the
6 auction expert pursuant to clause (iii),
7 such auction expert shall determine if any
8 changes should be made in the proposed
9 auction design in response to such com-
10 ments. If the auction expert determines
11 that changes should be made in such de-
12 sign in response to such comments, the
13 auction expert shall submit to the Sec-
14 retary a revised auction design for promul-
15 gation.

16 “(v) PUBLICATION OF REVISED AUC-
17 TION DESIGN.—The Secretary shall publish
18 by rule the revised auction design de-
19 scribed in clause (iv) unless the Secretary
20 determines and notifies the auction expert
21 and publishes in the Federal Register the
22 reasons for not accepting the changes in
23 the auction design.

24 “(vi) EXPEDITED RULEMAKING PROC-
25 ESS DEFINED.—In this subparagraph, the

1 term ‘expedited rulemaking process’ means
2 a process of publication of the proposed
3 auction design and solicitation of public
4 comments on such design. The provisions
5 of section 1871(b)(1) shall not apply to
6 such process.

7 “(3) CONDUCT OF AUCTION.—

8 “(A) INITIAL AUCTION.—No later than 11
9 months after the date of the enactment of this
10 section, the Secretary shall conduct auctions
11 (each in this section referred to as a ‘market-
12 priced auction’) among entities supplying mar-
13 ket-priced items and services in eligible auction
14 areas that are selected in the auction design
15 and consistent with subsection (a)(3). Market-
16 based auctions shall be conducted in accordance
17 with an auction design promulgated under
18 paragraph (2)(D).

19 “(B) REQUIREMENTS TO SUBMIT BID IN
20 AUCTION.—

21 “(i) SUBMISSION OF BIDS.—Any sup-
22 plier that complies with the requirements
23 of clause (ii) and that is identified by the
24 Secretary pursuant to paragraph (5)(C) as
25 a supplier of a market priced item or serv-

1 ice that is the subject of a market-priced
2 auction in an eligible auction area may
3 submit a bid at such auction.

4 “(ii) LICENSURE REQUIREMENTS AND
5 FINANCIAL ASSURANCES.—The licensure
6 and performance guarantee requirements
7 under section 1847(a)(1)(G) shall apply
8 for purposes of auctions conducted under
9 the demonstration project.

10 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
11 LISHING CLEARING PRICES.—

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

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

23 “(i) LEAD PRODUCT AS REFERENCE
24 POINT FOR OTHER PRODUCTS.—The lead
25 product selected under subparagraph (A)

1 shall be used as a reference point for all
2 other products (categorized by the health
3 care common procedure coding system
4 code) in the same category as the lead
5 product. Such lead product shall be as-
6 signed a weight of 100 percent.

7 “(ii) ADDITIONAL PRODUCTS IN EACH
8 PRODUCT CATEGORY.—Every other prod-
9 uct in the same product category as the
10 lead product identified under subparagraph
11 (A) shall be assigned a weight expressed as
12 a percentage of the lead product, which
13 percentage of the clearing price, estab-
14 lished by the auction expert in the plan de-
15 sign and adjusted after input from pro-
16 viders at the design plan conference, estab-
17 lishes the price of each item and service in
18 the category.

19 “(iii) ESTABLISHING CLEARING PRICE
20 FOR ITEMS AND SERVICES.—The Secretary
21 shall establish the clearing price for each
22 market-priced item and service that is sub-
23 ject to the auction based upon the data
24 submitted under this subparagraph. Such
25 clearing price shall be equal to the highest

1 cost bid that will meet capacity targets in
2 the eligible auction area for such item and
3 service.

4 “(5) CONDUCT OF AUCTION.—

5 “(A) IN GENERAL.—The Secretary shall
6 conduct the market-priced auctions consistent
7 with the provisions of this paragraph.

8 “(B) BEFORE AUCTION DATE.—Before the
9 scheduled auction date, the Secretary shall de-
10 tail auction rules that are consistent with the
11 auction plan developed under this section.
12 These rules shall include the following:

13 “(i) Licensure, bid-bond, and other re-
14 quirements for bidders.

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

17 “(iii) Performance obligations of con-
18 tract suppliers, guarantees, and penalties
19 for nonperformance.

20 “(iv) The lead product established
21 under paragraph (4)(A), the price index
22 (described in paragraph (2)(B)), and the
23 related health care common procedure cod-
24 ing system codes for each product in each
25 category and in each auction area.

1 “(C) BEFORE AUCTION DATE.—Before the
2 scheduled auction date, the Secretary shall re-
3 view all applicants and identify the qualified
4 suppliers eligible to submit bids. In carrying out
5 this subparagraph, the Secretary shall specify
6 the following:

7 “(i) In the case of an eligible bidder
8 with historic capacity in an auction area,
9 the historic capacity for such bidder for
10 each category that will be subject to auc-
11 tion.

12 “(ii) Each bidding supplier that has
13 no historic capacity in an auction area
14 shall be assigned a base capacity for each
15 product category made available under the
16 auction of 1 percent of the total dollar
17 value of that item or service made available
18 in the area.

19 “(iii) Bidder eligibility by eligible auc-
20 tion area.

21 “(D) IMMEDIATELY AFTER EACH AUCTION
22 ROUND.—Immediately after each auction, the
23 Secretary shall announce the remaining aggre-
24 gate supply for the bidders still participating in
25 the auction and the available supply which is

1 being bid for, plus any other relevant informa-
2 tion identified in the design conference.

3 “(E) AT CONCLUSION OF FINAL AUCTION
4 ROUND.—Immediately after the final auction
5 round, the Secretary shall announce the fol-
6 lowing:

7 “(i) A list of winning suppliers.

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

11 “(F) FINAL ACTIONS.—Not later than 1
12 year after the date of the enactment of this sec-
13 tion, the Secretary shall award contracts and
14 adjust the performance guarantees received
15 from each bidder to reflect the outcome of the
16 auction in accordance with paragraph (3)(B).

17 “(6) CONDITIONS OF AWARDING CONTRACT.—

18 “(A) IN GENERAL.—The Secretary shall
19 award a contract to any entity in an eligible
20 auction area in which an auction is conducted
21 and whose bid submitted pursuant to paragraph
22 (3)(A) is at or below the clearing price estab-
23 lished pursuant to paragraph (4)(G)(iii).

24 “(B) TERMS OF CONTRACT.—

1 “(i) MANDATORY ACCEPTANCE OF
2 CONTRACT.—A supplier that submits a bid
3 at or below such clearing price shall be
4 treated as having agreed to and accept the
5 contract awarded pursuant to subpara-
6 graph (A).

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

10 【“(iii) NO REQUIREMENT TO SUPPLY
11 UP TO BID AMOUNT.—Nothing in this sub-
12 section shall require a supplier that is
13 awarded a contract pursuant to subpara-
14 graph (A) to supply a market-priced item
15 or service that is the subject of an auction
16 in the eligible auction area beyond the level
17 of demand for such item or service in the
18 eligible auction area, even if such level is
19 below the level that the supplier assumed
20 in its bid.】

21 “(7) MONITORING ACCESS AND QUALITY.—

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

1 this subsection, including the requirements and
2 obligations established by the auction expert
3 under paragraph (5)(B).

4 “(B) ENFORCEMENT.—If the Secretary,
5 after consultation with the market monitor, de-
6 termines that there has been a material failure
7 of a supplier that has been awarded a contract
8 pursuant to paragraph (6) to comply with such
9 requirements, the Secretary, after consultation
10 with the market monitor, shall implement, con-
11 sistent with subparagraph (C), enforcement
12 measures, which may include the termination of
13 a contract awarded under paragraph (6).

14 “(C) ENFORCEMENT MEASURES.—

15 “(i) WARNING LETTERS AND OPPOR-
16 TUNITY FOR CORRECTIVE ACTION.—The
17 Secretary shall provide for the following
18 before terminating a contract awarded
19 under paragraph (6):

20 “(I) WARNING LETTER.—The
21 Secretary shall issue a formal warning
22 letter at least 90 days before the ter-
23 mination date. The warning letter
24 shall describe the reason (or reasons)
25 for the termination.

1 “(II) OPPORTUNITY FOR COR-
2 RECTIVE ACTION.—The Secretary
3 shall provide an opportunity for the
4 supplier to take corrective action to
5 come into compliance with the con-
6 tract and avoid termination of the
7 contract.

8 “(ii) ADDITIONAL CONSEQUENCES OF
9 TERMINATION.—In the case of a termi-
10 nation of such a contract with a supplier,
11 the Secretary may—

12 “(I) require forfeiture of amounts
13 submitted as a performance deposit
14 pursuant to paragraph (3)(B)(ii); and

15 “(II) terminate the supplier’s
16 agreement to participate in the pro-
17 gram under this title for a period not
18 to exceed 2 years.

19 “(d) APPLICATION OF COMPETITIVE ACQUISITION
20 PROGRAM PROVISIONS.—In implementing the demonstra-
21 tion project under this section, the provisions of section
22 1847(b) shall be applied as follows:

23 “(1) Paragraph (3) shall apply, except that, for
24 purposes of contracts awarded under the demonstra-
25 tion project, subparagraph (B) of such paragraph

1 shall be applied by substituting ‘2 years’ for ‘3
2 years’.

3 “(2) Paragraph (4) shall apply.

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

5 “(A) the reference in subparagraph (A) of
6 such paragraph to subsection (a)(2) is deemed
7 a reference to subsection (b)(1) of this section;
8 and

9 “(B) the reference in subparagraph (B)(i)
10 of such paragraph to subparagraph (A) is
11 deemed a reference to subsection (c)(4) of this
12 section.

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

14 “(5) Paragraph (8) shall apply.

15 “(6) Paragraph (9) shall apply, except that
16 such paragraph shall be applied as if a reference to
17 a bidding program includes a reference to the dem-
18 onstration project.

19 “(7) Paragraph (10) shall apply, except that
20 such paragraph shall be applied as if a reference to
21 a competitive acquisition program includes a ref-
22 erence to the demonstration project.

23 “(8) Paragraph (11) shall not apply, except
24 that—

1 “(A) the pendency of any claim for review
2 under this section shall not delay any auction
3 round conducted pursuant to subsection (a)(3)
4 or (c)(1); and

5 “(B) there shall be no administrative or ju-
6 dicial review of any claim to enjoin the oper-
7 ation of a market-priced auction conducted dur-
8 ing the first round of the demonstration
9 project.

10 “(e) TRANSPARENCY REQUIREMENTS FOR DEM-
11 ONSTRATION PROJECT.—In implementing the demonstra-
12 tion project, the Secretary shall provide for publication,
13 on an Internet Web site operated by the Secretary, the
14 following information:

15 “(1) The qualifications necessary to submit a
16 bid pursuant to subsection (c)(3)(B).

17 “(2) The requirements that are applicable for
18 purposes of subsection (c)(3)(B).

19 “(3) The quality standards and the perform-
20 ance standards developed pursuant to subsection
21 (c)(3)(B).

22 “(4) The calculation of the total market capac-
23 ity of an eligible auction area for purposes of sub-
24 section (c)(5)(C)(i).

1 “(5) The process for soliciting and accepting
2 bids for purposes of paragraphs (3) and (5) of sub-
3 section (c).

4 “(6) For purposes of subsection (c)(5)—

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

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

8 “(C) with respect to rejected bidders, the
9 specific reasons they are not qualified to bid,
10 and, with respect to any such rejection, a
11 means of ensuring the availability of the process
12 of review or appeal.

13 “(7) The calculation of and compliance with the
14 requirement of section 1847(b)(6)(D), as made ap-
15 plicable to the demonstration project by subsection
16 (d).

17 “(f) RELIANCE ON AUCTION EXPERT AND MARKET
18 MONITOR IN ESTABLISHING AND OPERATING MARKET-
19 PRICING DEMONSTRATION PROJECT; ADVISORY COM-
20 MITTEE REPORT AND MONITORING.—

21 “(1) AUCTION EXPERT AND MARKET MON-
22 ITOR.—

23 “(A) IN GENERAL.—The Secretary shall,
24 not later than 3 months after the date of the
25 enactment of this section, through the Office of

1 the Assistant Secretary for Planning and Eval-
2 uation, enter into a contract with an individual
3 to serve as the auction expert and such a con-
4 tract to serve as a market monitor to assist in
5 the design, development, implementation and
6 functioning of the auction to be conducted pur-
7 suant to subsection (b). The auction expert and
8 market monitor shall report and be accountable
9 to the Secretary.

10 “(B) SELECTION OF AUCTION EXPERT
11 AND MARKET MONITOR; TERM; ACCESS TO IN-
12 FORMATION.—

13 “(i) COMPETITIVE PROCESS.—The se-
14 lection of the individual to serve as the
15 auction expert and as a market monitor
16 under subparagraph (A) shall be under-
17 taken through a competitive process.

18 “(ii) DISQUALIFICATIONS.—An indi-
19 vidual may not be selected as the auction
20 expert if such individual—

21 “(I) is a current or former em-
22 ployee of the Centers for Medicare &
23 Medicaid Services;

24 “(II) is a current or former con-
25 tractor for the Centers for Medicare &

1 Medicaid Services that participated in
2 the implementation of the competitive
3 acquisition program under section
4 1847(a);

5 “(III) does not have significant
6 experience in implementing auctions
7 of similar complexity in Government
8 programs; and

9 “(IV) does not have appropriate
10 educational credentials.

11 “(iii) ACCESS TO INFORMATION.—The
12 Secretary shall make available to the auc-
13 tion expert and the market monitor all ap-
14 plicable information (including confidential
15 information) on the relevant markets
16 throughout the duration of the demonstra-
17 tion project.

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

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

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

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

6 “(C) lead the auction, contracting, and
7 other aspects of implementing the demonstra-
8 tion project with the advice of the market mon-
9 itor.

10 “(3) FUNCTIONS OF MARKET MONITOR.—

11 “(A) PARTICIPATE IN DESIGN CON-
12 FERENCE.—The market monitor shall partici-
13 pate in the design conference under subsection
14 (c)(2)(C) and, at the conference, provide a pres-
15 entation on the responsibilities of the market
16 monitor throughout the year and comment on
17 key aspects of the design and their purpose.

18 “(B) REVIEW OF FINAL DESIGN.—The
19 market monitor shall review the final auction
20 design recommendations submitted under sub-
21 section (c)(2)(D) and, within one month of the
22 release of such recommendations, provide public
23 comment on them.

24 “(C) MONITORING.—

1 “(i) IN GENERAL.—The market mon-
2 itor shall provide ongoing monitoring of
3 the performance of suppliers and the ef-
4 fects of the demonstration project to guard
5 against the occurrence of any negative ef-
6 fects specified in subsection (c)(7).

7 “(ii) PROVIDE TRANSPARENCY OF IN-
8 FORMATION.—The monitoring under
9 clause (i) shall include public availability of
10 the number of suppliers providing market-
11 priced items and services in an eligible
12 auction area during each year of the oper-
13 ation of the demonstration project.

14 “(D) SEMIANNUAL REPORTS TO SEC-
15 RETARY.—The market monitor shall provide
16 semiannual reports to the Secretary in the ini-
17 tial two years of the project and annually there-
18 after on the development and operations of the
19 demonstration project. In each report, the mon-
20 itor shall—

21 “(i) identify potential problems with
22 the project; and

23 “(ii) recommend solutions to problems
24 so identified.

1 “(E) ANNUAL REPORT.—The market mon-
2 itor shall submit to the Committees on Ways
3 and Means and Energy and Commerce of the
4 House of Representatives and the Committee
5 on Finance of the Senate an annual report on
6 the operation and functioning of the demonstra-
7 tion project. Each such report shall include in-
8 formation on—

9 “(i) potential problems with the
10 project;

11 “(ii) recommended solutions to prob-
12 lems identified pursuant to clause (i);

13 “(iii) the appropriateness of HCPCS
14 codes selected for auctions;

15 “(iv) an evaluation on the ability of
16 individuals eligible for benefits under this
17 part to obtain items and services subject to
18 the demonstration project;

19 “(v) any adverse health effects result-
20 ing from implementation of the project;

21 “(vi) any material deterioration in the
22 quality of items and services provided
23 under the project;

24 “(vii) the costs of any preventable or
25 prolonged hospitalizations due to lack of

1 timely access to market-priced items and
2 services; and

3 “(viii) any negative business con-
4 sequences to the supplier of any market-
5 priced items and services occurring as a re-
6 sult of errors made in the conduct of the
7 project.”.

8 (b) LICENSURE REQUIREMENTS AND FINANCIAL AS-
9 SURANCES UNDER COMPETITIVE BIDDING.—Section
10 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w-
11 3(a)(1)) is amended by adding at the end the following
12 new subparagraphs:

13 “(G) REQUIRING STATE LICENSURE AND
14 PERFORMANCE GUARANTEES FOR BIDDING EN-
15 TITIES.—With respect to rounds of competi-
16 tions beginning under this subsection on or
17 after the date of enactment of this subpara-
18 graph, the Secretary may not accept a bid from
19 an entity for an area unless, as of the deadline
20 for bid submission—

21 “(i) the entity meets applicable State
22 licensure requirements for such area for all
23 items in such bid for a product category;
24 and

1 “(ii) the entity has submitted a cash
2 deposit as a bid and performance bond in
3 an amount determined by the Secretary
4 after consultation with the auction expert,
5 except that the Secretary may, in the Sec-
6 retary’s sole discretion, accept a letter of
7 credit from a financial institution accept-
8 able to the Secretary in lieu of the cash de-
9 posit required to be submitted under this
10 clause.

11 “(H) TREATMENT OF BID AND PERFORM-
12 ANCE BONDS SUBMITTED.—

13 “(i) FOR SUCCESSFUL BIDDERS.—The
14 Secretary shall retain as a performance
15 guarantee the deposit submitted by a sup-
16 plier that is selected at an auction con-
17 ducted pursuant to subparagraph (G)(ii)
18 and such deposit—

19 “(I) shall be returned to the enti-
20 ty within 90 days of the date of com-
21 pletion of the contract; or

22 “(II) shall be retained by the
23 Secretary if the contract is terminated
24 before the expiration of the contract.

1 “(ii) UNSUCCESSFUL BIDDERS.—If a
2 bidding entity submits a bid that is not ac-
3 cepted for an area, the bid and perform-
4 ance deposit submitted for the entity for
5 such area shall be returned within 90 days
6 of the date of notice of nonacceptance.”.

7 (c) CLARIFICATION ABOUT INDIVIDUAL SELF-AD-
8 JUSTMENT FOR OFF-THE-SHELF ORTHOTICS.—

9 (1) IN GENERAL.—Section 1847(a)(2)(C) of the
10 Social Security Act (42 U.S.C. 1395w-3(a)(2)(C)) is
11 amended—

12 (A) by inserting “furnished to an indi-
13 vidual” after “section 1861(s)(9)”;

14 (B) by inserting after “minimal self-adjust-
15 ment” the following: “by that individual (and
16 not by another person)”; and

17 (C) by striking “to fit to the individual”
18 and inserting “to fit to that individual”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall apply to off-the-shelf
21 orthotics (as defined in section 1847(a)(2)(C) of the
22 Social Security Act, as amended by paragraph (1))
23 furnished in rounds of competitive bidding under
24 section 1847 of such Act initiated on or after such
25 date, as soon as practicable after the date of the en-

1 actment of this Act, as the Secretary of Health and
2 Human Services determines appropriate. Such
3 amendments only apply to the demonstration project
4 under section 1847C of such Act if the Secretary
5 implements competitive bidding for such off-the-shelf
6 orthotics under the competitive bidding program
7 under section 1847 of such Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To make adjustments, including by amending title XVIII of the Social Security Act, relating to competitive bidding program and durable medical equipment under the Medicare program, to amend such title to establish a DMEPOS market-pricing demonstration project, 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. ADJUSTMENTS RELATING TO COMPETITIVE**
2 **BIDDING PROGRAMS AND DURABLE MEDICAL**
3 **EQUIPMENT UNDER THE MEDICARE PRO-**
4 **GRAM.**

5 (a) IMPLEMENTATION OF PAYMENT ADJUSTMENTS
6 USING INFORMATION FROM COMPETITIVE BIDDING PRO-
7 GRAMS.—

8 (1) IN GENERAL.—In implementing paragraphs
9 (1) and (2) of section 414.210(g) of title 42, Code
10 of Federal Regulations, the Secretary of Health and
11 Human Services shall provide that the fee schedule
12 for each area (regardless of whether such area is de-
13 fined as rural areas for purposes of such section) is
14 adjusted to the lesser of—

15 (A) 130 percent of the regional price deter-
16 mined under clause (i) of such paragraph (1)
17 for the State in which such area is located (or,
18 in the case of an area located within the Dis-
19 trict of Columbia, for such District); and

20 (B) the fee schedule amount that otherwise
21 would be determined for such area under such
22 section on January 1, 2015, [updated by the
23 covered item update described in section
24 1834(a)(14)(L) of the Social Security Act (42
25 U.S.C. 1395m(a)(14)(L)) for the year in which

1 the items and services to which such fee sched-
2 ule applies are furnished】.

3 (2) PHASE-IN.—The adjustment described in
4 paragraph (1) shall be implemented over a four-year
5 period and in a manner that phases in such adjust-
6 ment in equal increments in each year of such four-
7 year period.

8 (b) BID CEILING FOR COMPETITIVE ACQUISITION
9 FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDI-
10 CARE PROGRAM.—Section 1847(b)(5) of the Social Secu-
11 rity Act (42 U.S.C. 1395w-3(b)(5)) is amended—

12 (1) in subparagraph (A)—

13 (A) by inserting “, subject to subpara-
14 graph (E),” after “subsection (a)(2)”; and

15 (B) by inserting “, subject to subpara-
16 graph (E),” after “Based on such bids”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(E) BID CEILING FOR DURABLE MEDICAL
20 EQUIPMENT.—In the case of covered items (as
21 defined in section 1834(a)(13)) for which pay-
22 ment would otherwise be made under section
23 1834(a) that are furnished with respect to com-
24 petitive bid contracts that begin on or after
25 January 1, 2017, payment under this section

1 for such items may not exceed the amount that
2 would otherwise be paid for such items under
3 section 1834 (without the application of sub-
4 section (a)(1)(F) of such section) if such items
5 and services were furnished on **January 1,**
6 **2015**, **updated by the covered item update**
7 **described in section 1834(a)(14)(L) for the year**
8 **in which such covered item is furnished**.”.

9 **SEC. 2. ESTABLISHMENT OF DMEPOS MARKET-PRICING**
10 **DEMONSTRATION PROJECT.**

11 (a) IN GENERAL.—Part B of title XVIII of the Social
12 Security Act is amended by inserting after section 1847B
13 (42 U.S.C. 1395w–3b) the following new section:

14 “DMEPOS MARKET-PRICING DEMONSTRATION PROJECT

15 “SEC. 1847C. (a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish and implement a market-pricing demonstration
18 project (in this section referred to as the ‘dem-
19 onstration project’) under which auctions are con-
20 ducted in eligible auction areas (as defined in para-
21 graph (4)) throughout the United States for the fur-
22 nishing of market-priced items and services (as de-
23 fined in subsection (b)) for which payment is made
24 under this part. The Secretary shall conduct at least
25 3 rounds of auctions under the demonstration
26 project.

1 “(2) ROLES OF AUCTION EXPERT AND MARKET
2 MONITOR.—The elements of the demonstration
3 project, including eligible auction areas, auction de-
4 sign, establishing of clearing prices, and conduct of
5 auctions, shall be established by the auction expert
6 with input and review by the market monitor under
7 subsection (f). In this section, the terms ‘auction ex-
8 pert’ and ‘market monitor’ refer to the respective
9 auction expert and market monitor contracted with
10 under subsection (f)(1).

11 “(3) IMPLEMENTATION TIMELINE.—The dem-
12 onstration project shall be carried out consistent
13 with the following timeline:

14 “(A) CONTRACTING WITH AUCTION EX-
15 PERT AND MARKET MONITOR.—Not later than
16 3 months after the date of the enactment of
17 this section, the Secretary shall contract with
18 the auction expert and market monitor.

19 “(B) INITIAL DESIGN OF AUCTION.—Not
20 later than 5 months after such date of enact-
21 ment, the initial design of the auction under the
22 project shall be completed.

23 “(C) AUCTION DESIGN CONFERENCE.—
24 Not later than 6 months after such date of en-

1 actment, the Secretary shall hold the auction
2 design conference under subsection (c)(2)(C).

3 “(D) FINALIZING AUCTION DETAILS.—Not
4 later than 7 ½ months after such date of en-
5 actment, the Secretary shall promulgate,
6 through expedited rulemaking under subsection
7 (c)(2)(D), the procedures to be used for auc-
8 tions under the demonstration project.

9 “(E) CONDUCT OF FIRST AUCTION.—Not
10 later than 11 months after such date of enact-
11 ment, the first auction under the demonstration
12 project shall occur under subsection (c)(3).

13 “(F) AWARDING CONTRACTS UNDER FIRST
14 AUCTION.—Not later than 1 year after such
15 date of enactment, contracts under such auction
16 shall be awarded.

17 “(4) ELIGIBLE AUCTION AREAS.—

18 “(A) IN GENERAL.—In this section and
19 section 1834, the term ‘eligible auction areas’
20 means counties, aggregations of counties, or
21 parts of counties, not excluded under subpara-
22 graph (D), as established by the Secretary.

23 “(B) MARKET AREAS MUST REFLECT ECO-
24 NOMIC INTERDEPENDENCY.—In determining
25 and selecting eligible auction areas, the Sec-

1 retary shall choose, from among counties, ag-
2 gregations of counties, or parts of counties,
3 auction areas that form an economically inter-
4 dependent area reflecting standard econometric
5 market models. Nothing in this subparagraph
6 shall preclude the Secretary from subdividing a
7 large county to take into account population
8 and geographic size in establishing auction
9 areas in order to comply with this subpara-
10 graph.

11 “(C) SELECTION OF AUCTION AREAS.—In
12 conducting the demonstration project, the Sec-
13 retary shall select at least 10 eligible auction
14 areas that constituted Round 2 Recompete com-
15 petitive bidding areas under section 1847. To
16 the extent possible areas selected for the dem-
17 onstration project should represent a variety of
18 econometric market models.

19 “(D) EXCLUSION OF CERTAIN AUCTION
20 AREAS.—The Secretary shall not subject areas
21 described in clause (iii) of section
22 1847(a)(1)(D) to market program reimburse-
23 ment rates under the demonstration project be-
24 fore the year specified in such clause.

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

8 “(A) Subparagraph (C) (relating to waiver
9 of certain provisions).

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

19 “(C) Subparagraph (F) (relating to feed-
20 back on missing financial documentation), ex-
21 cept that any reference to a round of a program
22 is deemed a reference to a year of the dem-
23 onstration project.

1 “(b) MARKET-PRICED ITEMS AND SERVICES DE-
2 FINED.—In this section, the term ‘market-priced items
3 and services’ means the following:

4 “(1) Oxygen supplies and equipment.

5 “(2) Standard power wheelchairs, power scoot-
6 ers, and related accessories.

7 “(3) Manual wheelchairs.

8 “(4) Enteral nutrients, equipment, and sup-
9 plies.

10 “(5) Continuous positive airway pressure de-
11 vices, respiratory assistive devices, and related sup-
12 plies.

13 “(6) Hospital beds and related accessories.

14 “(7) Walkers and related accessories.

15 “(8) Support services (Group 2 mattresses and
16 overlays).

17 “(9) Negative pressure wound therapy pumps
18 and related supplies and accessories.

19 “(10) Off-the-shelf orthotics described in sub-
20 paragraph (C) of section 1847(a)(2) to the extent
21 they are included pursuant to such subparagraph in
22 items and services described under such section and
23 included in a competitive bidding program in a com-
24 petitive acquisition area under section 1847(a).

25 “(11) External infusion pumps and supplies.

1 “(12) Other items and services (other than
2 those items and services specified in paragraph (2))
3 that could have been subject to participation in com-
4 petitive acquisition programs under section
5 1847(a)(1).

6 “(c) DEMONSTRATION PRICING PROJECT REQUIRE-
7 MENTS.—

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 selected no later than 11 months after the date of
14 the enactment of this section.

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

17 “(A) TRANSPARENT PROCESS RE-
18 QUIRED.—In establishing such auction design,
19 the Secretary shall utilize an open and trans-
20 parent process that involves all eligible partici-
21 pants described in subparagraph (C)(ii), includ-
22 ing through the auction design conference and
23 other outreach efforts.

24 “(B) INITIAL AUCTION DESIGN.—

1 “(i) IN GENERAL.—Not later than 5
2 months after the date of the enactment of
3 this section, the auction expert shall de-
4 velop an initial auction design that shall
5 propose eligible auction areas to be se-
6 lected for the demonstration project, lead
7 products for each product category, the
8 price index associated with each lead prod-
9 uct, and proposed rules for the conduct of
10 auctions.

11 “(ii) REQUIREMENTS.—In estab-
12 lishing the auction design, the Secretary
13 shall ensure that rates of payment devel-
14 oped through the auction process—

15 “(I) are market-based and based
16 on binding bids and clearing prices;
17 and

18 “(II) do not result in a diminu-
19 tion of access to or quality of market-
20 priced items and services in the eligi-
21 ble auction areas in which the dem-
22 onstration project is conducted.

23 “(C) AUCTION DESIGN CONFERENCE.—

24 “(i) IN GENERAL.—Not later than 6
25 months after the date of the enactment of

1 this section, the Secretary shall convene a
2 design conference (in this paragraph re-
3 ferred to as the ‘design conference’) for the
4 auction process under this section. The
5 auction expert shall chair the conference.

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

9 “(I) MANUFACTURERS, SUP-
10 PLIERS AND TRADE ASSOCIATIONS OF
11 DMEPOS.—Representatives of market-
12 priced items and services.

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

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

20 “(iii) PURPOSE OF CONFERENCE.—
21 The purpose of the design conference shall
22 be to review the initial auction design de-
23 veloped by the auction expert under sub-
24 paragraph (B) for the establishment of an
25 efficient auction consistent with best prac-

1 tices and actuarial science and to provide
2 stakeholders the opportunity to provide
3 feedback on the initial auction design.

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 shall in-
15 vite input from suppliers as to the re-
16 lationship between lead product prices
17 and the value of other products in the
18 category and may establish working
19 committees on major issues;

20 [“(IV) the auction expert shall
21 invite input from small suppliers as to
22 the ways in which the preliminary
23 auction design can be improved to en-
24 sure that small suppliers have the op-

1 opportunity to participate in the auction;
2 and】

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

7 “(D) AUCTION DESIGN PROPOSED
8 THROUGH EXPEDITED RULEMAKING.—

9 “(i) SUBMISSION TO SECRETARY.—
10 Not later than 7½ months after the date
11 of the enactment of this section, the auc-
12 tion expert shall submit to the Secretary
13 an auction design that takes into account
14 the 【feedback on the initial auction design
15 provided at the】 auction conference.

16 “(ii) PUBLICATION AND PROPOSAL.—
17 Upon receiving the submission of the auc-
18 tion design by the auction expert pursuant
19 to clause (i), the Secretary shall publish
20 and propose a rule for implementing such
21 auction design through an expedited rule-
22 making process.

23 “(iii) SUBMISSION OF COMMENTS TO
24 AUCTION EXPERT.—The Secretary shall
25 submit comments received on such design

1 to the auction expert to consider for modi-
2 fication of the auction design.

3 “(iv) DETERMINATION OF CHANGES
4 TO AUCTION DESIGN.—Taking into consid-
5 eration the comments submitted to the
6 auction expert pursuant to clause (iii),
7 such auction expert shall determine if any
8 changes should be made in the proposed
9 auction design in response to such com-
10 ments. If the auction expert determines
11 that changes should be made in such de-
12 sign in response to such comments, the
13 auction expert shall submit to the Sec-
14 retary a revised auction design for promul-
15 gation.

16 “(v) PUBLICATION OF REVISED AUC-
17 TION DESIGN.—The Secretary shall publish
18 by rule the revised auction design de-
19 scribed in clause (iv) unless the Secretary
20 determines and notifies the auction expert
21 and publishes in the Federal Register the
22 reasons for not accepting the changes in
23 the auction design.

24 “(vi) EXPEDITED RULEMAKING PROC-
25 ESS DEFINED.—In this subparagraph, the

1 term ‘expedited rulemaking process’ means
2 a process of publication of the proposed
3 auction design and solicitation of public
4 comments on such design. The provisions
5 of section 1871(b)(1) shall not apply to
6 such process.

7 “(3) CONDUCT OF AUCTION.—

8 “(A) INITIAL AUCTION.—No later than 11
9 months after the date of the enactment of this
10 section, the Secretary shall conduct auctions
11 (each in this section referred to as a ‘market-
12 priced auction’) among entities supplying mar-
13 ket-priced items and services in eligible auction
14 areas that are selected in the auction design
15 and consistent with subsection (a)(3). Market-
16 based auctions shall be conducted in accordance
17 with an auction design promulgated under
18 paragraph (2)(D).

19 “(B) REQUIREMENTS TO SUBMIT BID IN
20 AUCTION.—

21 “(i) SUBMISSION OF BIDS.—Any sup-
22 plier that complies with the requirements
23 of clause (ii) and that is identified by the
24 Secretary pursuant to paragraph (5)(C) as
25 a supplier of a market priced item or serv-

1 ice that is the subject of a market-priced
2 auction in an eligible auction area may
3 submit a bid at such auction.

4 “(ii) LICENSURE REQUIREMENTS AND
5 FINANCIAL ASSURANCES.—The licensure
6 and performance guarantee requirements
7 under section 1847(a)(1)(G) shall apply
8 for purposes of auctions conducted under
9 the demonstration project.

10 “(4) LEAD PRODUCT SELECTION FOR ESTAB-
11 LISHING CLEARING PRICES.—

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

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

23 “(i) LEAD PRODUCT AS REFERENCE
24 POINT FOR OTHER PRODUCTS.—The lead
25 product selected under subparagraph (A)

1 shall be used as a reference point for all
2 other products (categorized by the health
3 care common procedure coding system
4 code) in the same category as the lead
5 product. Such lead product shall be as-
6 signed a weight of 100 percent.

7 “(ii) ADDITIONAL PRODUCTS IN EACH
8 PRODUCT CATEGORY.—Every other prod-
9 uct in the same product category as the
10 lead product identified under subparagraph
11 (A) shall be assigned a weight expressed as
12 a percentage of the lead product, which
13 percentage of the clearing price, estab-
14 lished by the auction expert in the plan de-
15 sign and adjusted after input from pro-
16 viders at the design plan conference, estab-
17 lishes the price of each item and service in
18 the category.

19 “(iii) ESTABLISHING CLEARING PRICE
20 FOR ITEMS AND SERVICES.—The Secretary
21 shall establish the clearing price for each
22 market-priced item and service that is sub-
23 ject to the auction based upon the data
24 submitted under this subparagraph. Such
25 clearing price shall be equal to the highest

1 cost bid that will meet capacity targets in
2 the eligible auction area for such item and
3 service.

4 “(5) CONDUCT OF AUCTION.—

5 “(A) IN GENERAL.—The Secretary shall
6 conduct the market-priced auctions consistent
7 with the provisions of this paragraph.

8 “(B) BEFORE AUCTION DATE.—Before the
9 scheduled auction date, the Secretary shall de-
10 tail auction rules that are consistent with the
11 auction plan developed under this section.
12 These rules shall include the following:

13 “(i) Licensure, bid-bond, and other re-
14 quirements for bidders.

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

17 “(iii) Performance obligations of con-
18 tract suppliers, guarantees, and penalties
19 for nonperformance.

20 “(iv) The lead product established
21 under paragraph (4)(A), the price index
22 (described in paragraph (2)(B)), and the
23 related health care common procedure cod-
24 ing system codes for each product in each
25 category and in each auction area.

1 “(C) BEFORE AUCTION DATE.—Before the
2 scheduled auction date, the Secretary shall re-
3 view all applicants and identify the qualified
4 suppliers eligible to submit bids. In carrying out
5 this subparagraph, the Secretary shall specify
6 the following:

7 “(i) In the case of an eligible bidder
8 with historic capacity in an auction area,
9 the historic capacity for such bidder for
10 each category that will be subject to auc-
11 tion.

12 “(ii) Each bidding supplier that has
13 no historic capacity in an auction area
14 shall be assigned a base capacity for each
15 product category made available under the
16 auction of 1 percent of the total dollar
17 value of that item or service made available
18 in the area.

19 “(iii) Bidder eligibility by eligible auc-
20 tion area.

21 “(D) IMMEDIATELY AFTER EACH AUCTION
22 ROUND.—Immediately after each auction, the
23 Secretary shall announce the remaining aggre-
24 gate supply for the bidders still participating in
25 the auction and the available supply which is

1 being bid for, plus any other relevant informa-
2 tion identified in the design conference.

3 “(E) AT CONCLUSION OF FINAL AUCTION
4 ROUND.—Immediately after the final auction
5 round, the Secretary shall announce the fol-
6 lowing:

7 “(i) A list of winning suppliers.

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

11 “(F) FINAL ACTIONS.—Not later than 1
12 year after the date of the enactment of this sec-
13 tion, the Secretary shall award contracts and
14 adjust the performance guarantees received
15 from each bidder to reflect the outcome of the
16 auction in accordance with paragraph (3)(B).

17 “(6) CONDITIONS OF AWARDING CONTRACT.—

18 “(A) IN GENERAL.—The Secretary shall
19 award a contract to any entity in an eligible
20 auction area in which an auction is conducted
21 and whose bid submitted pursuant to paragraph
22 (3)(A) is at or below the clearing price estab-
23 lished pursuant to paragraph (4)(G)(iii).

24 “(B) TERMS OF CONTRACT.—

1 “(i) MANDATORY ACCEPTANCE OF
2 CONTRACT.—A supplier that submits a bid
3 at or below such clearing price shall be
4 treated as having agreed to and accept the
5 contract awarded pursuant to subpara-
6 graph (A).

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

10 【“(iii) NO REQUIREMENT TO SUPPLY
11 UP TO BID AMOUNT.—Nothing in this sub-
12 section shall require a supplier that is
13 awarded a contract pursuant to subpara-
14 graph (A) to supply a market-priced item
15 or service that is the subject of an auction
16 in the eligible auction area beyond the level
17 of demand for such item or service in the
18 eligible auction area, even if such level is
19 below the level that the supplier assumed
20 in its bid.】

21 “(7) MONITORING ACCESS AND QUALITY.—

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

1 this subsection, including the requirements and
2 obligations established by the auction expert
3 under paragraph (5)(B).

4 “(B) ENFORCEMENT.—If the Secretary,
5 after consultation with the market monitor, de-
6 termines that there has been a material failure
7 of a supplier that has been awarded a contract
8 pursuant to paragraph (6) to comply with such
9 requirements, the Secretary, after consultation
10 with the market monitor, shall implement, con-
11 sistent with subparagraph (C), enforcement
12 measures, which may include the termination of
13 a contract awarded under paragraph (6).

14 “(C) ENFORCEMENT MEASURES.—

15 “(i) WARNING LETTERS AND OPPOR-
16 TUNITY FOR CORRECTIVE ACTION.—The
17 Secretary shall provide for the following
18 before terminating a contract awarded
19 under paragraph (6):

20 “(I) WARNING LETTER.—The
21 Secretary shall issue a formal warning
22 letter at least 90 days before the ter-
23 mination date. The warning letter
24 shall describe the reason (or reasons)
25 for the termination.

1 “(II) OPPORTUNITY FOR COR-
2 RECTIVE ACTION.—The Secretary
3 shall provide an opportunity for the
4 supplier to take corrective action to
5 come into compliance with the con-
6 tract and avoid termination of the
7 contract.

8 “(ii) ADDITIONAL CONSEQUENCES OF
9 TERMINATION.—In the case of a termi-
10 nation of such a contract with a supplier,
11 the Secretary may—

12 “(I) require forfeiture of amounts
13 submitted as a performance deposit
14 pursuant to paragraph (3)(B)(ii); and

15 “(II) terminate the supplier’s
16 agreement to participate in the pro-
17 gram under this title for a period not
18 to exceed 2 years.

19 “(d) APPLICATION OF COMPETITIVE ACQUISITION
20 PROGRAM PROVISIONS.—In implementing the demonstra-
21 tion project under this section, the provisions of section
22 1847(b) shall be applied as follows:

23 “(1) Paragraph (3) shall apply, except that, for
24 purposes of contracts awarded under the demonstra-
25 tion project, subparagraph (B) of such paragraph

1 shall be applied by substituting ‘2 years’ for ‘3
2 years’.

3 “(2) Paragraph (4) shall apply.

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

5 “(A) the reference in subparagraph (A) of
6 such paragraph to subsection (a)(2) is deemed
7 a reference to subsection (b)(1) of this section;
8 and

9 “(B) the reference in subparagraph (B)(i)
10 of such paragraph to subparagraph (A) is
11 deemed a reference to subsection (c)(4) of this
12 section.

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

14 “(5) Paragraph (8) shall apply.

15 “(6) Paragraph (9) shall apply, except that
16 such paragraph shall be applied as if a reference to
17 a bidding program includes a reference to the dem-
18 onstration project.

19 “(7) Paragraph (10) shall apply, except that
20 such paragraph shall be applied as if a reference to
21 a competitive acquisition program includes a ref-
22 erence to the demonstration project.

23 “(8) Paragraph (11) shall not apply, except
24 that—

1 “(A) the pendency of any claim for review
2 under this section shall not delay any auction
3 round conducted pursuant to subsection (a)(3)
4 or (c)(1); and

5 “(B) there shall be no administrative or ju-
6 dicial review of any claim to enjoin the oper-
7 ation of a market-priced auction conducted dur-
8 ing the first round of the demonstration
9 project.

10 “(e) TRANSPARENCY REQUIREMENTS FOR DEM-
11 ONSTRATION PROJECT.—In implementing the demonstra-
12 tion project, the Secretary shall provide for publication,
13 on an Internet Web site operated by the Secretary, the
14 following information:

15 “(1) The qualifications necessary to submit a
16 bid pursuant to subsection (c)(3)(B).

17 “(2) The requirements that are applicable for
18 purposes of subsection (c)(3)(B).

19 “(3) The quality standards and the perform-
20 ance standards developed pursuant to subsection
21 (c)(3)(B).

22 “(4) The calculation of the total market capac-
23 ity of an eligible auction area for purposes of sub-
24 section (c)(5)(C)(i).

1 “(5) The process for soliciting and accepting
2 bids for purposes of paragraphs (3) and (5) of sub-
3 section (c).

4 “(6) For purposes of subsection (c)(5)—

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

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

8 “(C) with respect to rejected bidders, the
9 specific reasons they are not qualified to bid,
10 and, with respect to any such rejection, a
11 means of ensuring the availability of the process
12 of review or appeal.

13 “(7) The calculation of and compliance with the
14 requirement of section 1847(b)(6)(D), as made ap-
15 plicable to the demonstration project by subsection
16 (d).

17 “(f) RELIANCE ON AUCTION EXPERT AND MARKET
18 MONITOR IN ESTABLISHING AND OPERATING MARKET-
19 PRICING DEMONSTRATION PROJECT; ADVISORY COM-
20 MITTEE REPORT AND MONITORING.—

21 “(1) AUCTION EXPERT AND MARKET MON-
22 ITOR.—

23 “(A) IN GENERAL.—The Secretary shall,
24 not later than 3 months after the date of the
25 enactment of this section, through the Office of

1 the Assistant Secretary for Planning and Eval-
2 uation, enter into a contract with an individual
3 to serve as the auction expert and such a con-
4 tract to serve as a market monitor to assist in
5 the design, development, implementation and
6 functioning of the auction to be conducted pur-
7 suant to subsection (b). The auction expert and
8 market monitor shall report and be accountable
9 to the Secretary.

10 “(B) SELECTION OF AUCTION EXPERT
11 AND MARKET MONITOR; TERM; ACCESS TO IN-
12 FORMATION.—

13 “(i) COMPETITIVE PROCESS.—The se-
14 lection of the individual to serve as the
15 auction expert and as a market monitor
16 under subparagraph (A) shall be under-
17 taken through a competitive process.

18 “(ii) DISQUALIFICATIONS.—An indi-
19 vidual may not be selected as the auction
20 expert if such individual—

21 “(I) is a current or former em-
22 ployee of the Centers for Medicare &
23 Medicaid Services;

24 “(II) is a current or former con-
25 tractor for the Centers for Medicare &

1 Medicaid Services that participated in
2 the implementation of the competitive
3 acquisition program under section
4 1847(a);

5 “(III) does not have significant
6 experience in implementing auctions
7 of similar complexity in Government
8 programs; and

9 “(IV) does not have appropriate
10 educational credentials.

11 “(iii) ACCESS TO INFORMATION.—The
12 Secretary shall make available to the auc-
13 tion expert and the market monitor all ap-
14 plicable information (including confidential
15 information) on the relevant markets
16 throughout the duration of the demonstra-
17 tion project.

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

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

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

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

6 “(C) lead the auction, contracting, and
7 other aspects of implementing the demonstra-
8 tion project with the advice of the market mon-
9 itor.

10 “(3) FUNCTIONS OF MARKET MONITOR.—

11 “(A) PARTICIPATE IN DESIGN CON-
12 FERENCE.—The market monitor shall partici-
13 pate in the design conference under subsection
14 (c)(2)(C) and, at the conference, provide a pres-
15 entation on the responsibilities of the market
16 monitor throughout the year and comment on
17 key aspects of the design and their purpose.

18 “(B) REVIEW OF FINAL DESIGN.—The
19 market monitor shall review the final auction
20 design recommendations submitted under sub-
21 section (c)(2)(D) and, within one month of the
22 release of such recommendations, provide public
23 comment on them.

24 “(C) MONITORING.—

1 “(i) IN GENERAL.—The market mon-
2 itor shall provide ongoing monitoring of
3 the performance of suppliers and the ef-
4 fects of the demonstration project to guard
5 against the occurrence of any negative ef-
6 fects specified in subsection (c)(7).

7 “(ii) PROVIDE TRANSPARENCY OF IN-
8 FORMATION.—The monitoring under
9 clause (i) shall include public availability of
10 the number of suppliers providing market-
11 priced items and services in an eligible
12 auction area during each year of the oper-
13 ation of the demonstration project.

14 “(D) SEMIANNUAL REPORTS TO SEC-
15 RETARY.—The market monitor shall provide
16 semiannual reports to the Secretary in the ini-
17 tial two years of the project and annually there-
18 after on the development and operations of the
19 demonstration project. In each report, the mon-
20 itor shall—

21 “(i) identify potential problems with
22 the project; and

23 “(ii) recommend solutions to problems
24 so identified.

1 “(E) ANNUAL REPORT.—The market mon-
2 itor shall submit to the Committees on Ways
3 and Means and Energy and Commerce of the
4 House of Representatives and the Committee
5 on Finance of the Senate an annual report on
6 the operation and functioning of the demonstra-
7 tion project. Each such report shall include in-
8 formation on—

9 “(i) potential problems with the
10 project;

11 “(ii) recommended solutions to prob-
12 lems identified pursuant to clause (i);

13 “(iii) the appropriateness of HCPCS
14 codes selected for auctions;

15 “(iv) an evaluation on the ability of
16 individuals eligible for benefits under this
17 part to obtain items and services subject to
18 the demonstration project;

19 “(v) any adverse health effects result-
20 ing from implementation of the project;

21 “(vi) any material deterioration in the
22 quality of items and services provided
23 under the project;

24 “(vii) the costs of any preventable or
25 prolonged hospitalizations due to lack of

1 timely access to market-priced items and
2 services; and

3 “(viii) any negative business con-
4 sequences to the supplier of any market-
5 priced items and services occurring as a re-
6 sult of errors made in the conduct of the
7 project.”.

8 (b) LICENSURE REQUIREMENTS AND FINANCIAL AS-
9 SURANCES UNDER COMPETITIVE BIDDING.—Section
10 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w-
11 3(a)(1)) is amended by adding at the end the following
12 new subparagraphs:

13 “(G) REQUIRING STATE LICENSURE AND
14 PERFORMANCE GUARANTEES FOR BIDDING EN-
15 TITIES.—With respect to rounds of competi-
16 tions beginning under this subsection on or
17 after the date of enactment of this subpara-
18 graph, the Secretary may not accept a bid from
19 an entity for an area unless, as of the deadline
20 for bid submission—

21 “(i) the entity meets applicable State
22 licensure requirements for such area for all
23 items in such bid for a product category;
24 and

1 “(ii) the entity has submitted a cash
2 deposit as a bid and performance bond in
3 an amount determined by the Secretary
4 after consultation with the auction expert,
5 except that the Secretary may, in the Sec-
6 retary’s sole discretion, accept a letter of
7 credit from a financial institution accept-
8 able to the Secretary in lieu of the cash de-
9 posit required to be submitted under this
10 clause.

11 “(H) TREATMENT OF BID AND PERFORM-
12 ANCE BONDS SUBMITTED.—

13 “(i) FOR SUCCESSFUL BIDDERS.—The
14 Secretary shall retain as a performance
15 guarantee the deposit submitted by a sup-
16 plier that is selected at an auction con-
17 ducted pursuant to subparagraph (G)(ii)
18 and such deposit—

19 “(I) shall be returned to the enti-
20 ty within 90 days of the date of com-
21 pletion of the contract; or

22 “(II) shall be retained by the
23 Secretary if the contract is terminated
24 before the expiration of the contract.

1 “(ii) UNSUCCESSFUL BIDDERS.—If a
2 bidding entity submits a bid that is not ac-
3 cepted for an area, the bid and perform-
4 ance deposit submitted for the entity for
5 such area shall be returned within 90 days
6 of the date of notice of nonacceptance.”.

7 (c) CLARIFICATION ABOUT INDIVIDUAL SELF-AD-
8 JUSTMENT FOR OFF-THE-SHELF ORTHOTICS.—

9 (1) IN GENERAL.—Section 1847(a)(2)(C) of the
10 Social Security Act (42 U.S.C. 1395w-3(a)(2)(C)) is
11 amended—

12 (A) by inserting “furnished to an indi-
13 vidual” after “section 1861(s)(9)”;

14 (B) by inserting after “minimal self-adjust-
15 ment” the following: “by that individual (and
16 not by another person)”; and

17 (C) by striking “to fit to the individual”
18 and inserting “to fit to that individual”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall apply to off-the-shelf
21 orthotics (as defined in section 1847(a)(2)(C) of the
22 Social Security Act, as amended by paragraph (1))
23 furnished in rounds of competitive bidding under
24 section 1847 of such Act initiated on or after such
25 date, as soon as practicable after the date of the en-

1 actment of this Act, as the Secretary of Health and
2 Human Services determines appropriate. Such
3 amendments only apply to the demonstration project
4 under section 1847C of such Act if the Secretary
5 implements competitive bidding for such off-the-shelf
6 orthotics under the competitive bidding program
7 under section 1847 of such Act.

From: DiBlasio, Carla
To: [Yen, Lisa \(CMS/OL\)](#)
Cc: [Uehlecke, Nicholas](#); [Burney, Ira \(CMS/OL\)](#); [Druckman, Jennifer \(CMS/OL\)](#)
Subject: Follow-up re: early deadline for MU hardship exception
Date: Tuesday, December 1, 2015 11:20:57 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi all –

I hope you had a wonderful Thanksgiving holiday. I wanted to check in with you to determine whether you had a chance to confirm with operations and your legal dept on the feasibility of pushing up the deadline for MU hardship applications by 3 months (from July 1st to April 1st)?

Based on our phone call on November 25th, you thought this would be feasible even when you take into account the possibility of offering a blanket hardship exception. It sounded like the FAQ released by CMS in October would allow CMS to circumvent the normal rulemaking process, which could potentially make a blanket hardship exception available for providers within a more timely manner. Please let me know if you were able to confirm that it would be feasible to push up the hardship deadline by 3 months.

We are moving quickly on the bill and greatly appreciate your feedback.

Many thanks!!
Carla

Carla DiBlasio, Esq.
Policy Advisor
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: Yen, Lisa (CMS/OL) [mailto:Lisa.Yen@cms.hhs.gov]
Sent: Wednesday, November 25, 2015 11:31 AM
To: DiBlasio, Carla
Cc: Uehlecke, Nicholas; Burney, Ira (CMS/OL)
Subject: RE: Available for a quick call tomorrow?

Great – let's plan for 11:45 am. I set up a conference line – Call-in number: (b)(6) and Meeting Number: (b)(6)

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Wednesday, November 25, 2015 11:18 AM
To: Yen, Lisa (CMS/OL)
Cc: Uehlecke, Nicholas; Burney, Ira (CMS/OL)
Subject: RE: Available for a quick call tomorrow?

Yes that sounds great. Thanks!

From: Yen, Lisa (CMS/OL) [<mailto:Lisa.Yen@cms.hhs.gov>]
Sent: Wednesday, November 25, 2015 11:11 AM
To: DiBlasio, Carla
Cc: Uehlecke, Nicholas; Burney, Ira (CMS/OL)
Subject: RE: Available for a quick call tomorrow?

Hi Carla – are you available after 11:30 am?

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Wednesday, November 25, 2015 10:01 AM
To: Yen, Lisa (CMS/OL)
Cc: Uehlecke, Nicholas
Subject: RE: Available for a quick call tomorrow?

Thanks so much, Lisa!

From: Yen, Lisa (CMS/OL) [<mailto:Lisa.Yen@cms.hhs.gov>]
Sent: Wednesday, November 25, 2015 10:00 AM
To: DiBlasio, Carla
Subject: Re: Available for a quick call tomorrow?

Hi Carla - I am checking with others in OL who are familiar with this issue on their availability and will get back to you.

Thanks!
Lisa

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Tuesday, November 24, 2015 08:45 PM
To: Yen, Lisa (CMS/OL)
Subject: FW: Available for a quick call tomorrow?

Are you available for a call tomorrow, Lisa?

Thanks!

From: DiBlasio, Carla
Sent: Tuesday, November 24, 2015 8:44 PM
To: 'Jennifer.Druckman@cms.hhs.gov'
Cc: Uehlecke, Nicholas
Subject: Available for a quick call tomorrow?

Hey Jennifer,

We need some immediate feedback about a tweak in the MU blanket hardship exception language. We are attempting to incorporate H.R. 3940 in the omnibus, so time is of the essence. In a nutshell, we are considering pushing up the deadline for the blanket hardship application by 3 months (from July 1st to April 1st). It would be helpful to learn more about how CMS plans to implement the blanket hardship exception in order to determine how feasible an April 1st deadline is for both providers and CMS.

I am available tomorrow morning. Let us know what time works best for you.

Many thanks!

Carla

Carla DiBlasio, Esq.
Policy Advisor
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: [Burney, Ira \(CMS/OL\)](#)
To: [Druckman, Jennifer \(CMS/OL\)](#)
Subject: FW: TA on bill regarding competitive bidding
Date: Thursday, December 3, 2015 1:46:00 PM
Attachments: DME Payments - Section 1 (OL comments).docx

From: Yen, Lisa (CMS/OL)
Sent: Thursday, December 03, 2015 11:57 AM
To: Burney, Ira (CMS/OL)
Subject: FW: TA on bill regarding competitive bidding

Ira – just wanted to check in on this TA request. (b)(5)
(b)(5)

From: Yen, Lisa (CMS/OL)
Sent: Wednesday, December 2, 2015 5:07 PM
To: Burney, Ira (CMS/OL)
Subject: RE: TA on bill regarding competitive bidding

Use this version. I forgot a comma in the first line.

From: Yen, Lisa (CMS/OL)
Sent: Wednesday, December 2, 2015 4:26 PM
To: Burney, Ira (CMS/OL)
Subject: FW: TA on bill regarding competitive bidding

Here are consolidated comments from Joel and I on section 1 of this bill. Let me know if you have any questions. Thanks!

From: Street, Amanda [<mailto:Amanda.Street@mail.house.gov>]
Sent: Wednesday, November 18, 2015 2:52 PM
To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica
Subject: Re: TA on bill regarding competitive bidding

My apologies for the multiple emails, but I did want to be sure we shared the full language of the bill. You all have reviewed Section 2 of the bill, which includes the market pricing program demonstration.

Many thanks,
Amanda

--

Amanda Street
House Budget Committee
207 Cannon House Office Building

Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Street, Amanda"
Date: Wednesday, November 18, 2015 at 2:43 PM
To: "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov"
Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica"
Subject: TA on bill regarding competitive bidding

Hi Ira and Lisa,

We are working with our leg counsel on a new rate for non-CBAs set to begin in 2016. They've asked us to reach out given many of the items we are working to reform are in regulation rather than statute and would appreciate some additional guidance as to how the current language would be interpreted. Would you mind taking a look?

We are particularly interested in the section (b) that establishes a bid ceiling for contracts beginning on or after Jan 1, 2017 and our language that includes a reference to section 1834 (a)(1)(F). The particular area in question is highlighted below.

I've also copied our counsels, Jesse and Jessica, to correct me in case I've missed anything.

Thank you so much!
Amanda

SECTION 1. REVISION OF PAYMENTS FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.

(a) TRANSITION TO IMPLEMENTATION OF FEE SCHEDULE PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended by adding at the end the following new subparagraph:

“(J) TRANSITION TO IMPLEMENTATION OF PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—

“(i) IN GENERAL.—In implementing subparagraph (F) and paragraphs (1) and (2) of section 414.210(g) of title 42, Code of Federal Regulations, with respect to items and services furnished on or after January 1, 2016, and before January 1, 2018, the fee schedule amount that would otherwise be determined for each area under this section shall be adjusted to the lesser of—

“(l) the applicable percent of the regional price determined under clause (i) of such

paragraph (1) for the State in which such area is located (or, in the case of an area located within the District of Columbia, for such District); and

“(II) the fee schedule amount that would otherwise be determined for such area under this section on January 1, 2015, updated by the covered item update described in paragraph (14)(L) for the year in which the items and services to which such fee schedule applies are furnished.

“(ii) APPLICABLE PERCENT.—For purposes of clause (i)(I), the term ‘applicable percent’ means—

“(I) for an area defined as a rural area for purposes of such section 414.210(g) or an area in a frontier State (as defined in section 1886(d)(3)(E)(iii)(II)), 130 percent; and

“(II) for any other area, 120 percent.

“(iii) PHASE-IN.—The adjustment described in clause (i) shall be implemented over a two-year period and in a manner that phases in such adjustment in equal increments in each year of such two-year period, with such adjustment being fully implemented with respect to items and services furnished in 2017.”.

b) BID CEILING FOR COMPETITIVE ACQUISITION FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.—Section 1847(b)(5) of the Social Security Act (42 U.S.C. 1395w-3(b)(5)) is amended—

(1) in subparagraph (A)— (A) by inserting “, subject to subparagraph (E),” after “subsection (a)(2)”; and (B) by inserting “, subject to subparagraph (E),” after “Based on such bids”; and

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

“(E) BID CEILING FOR DURABLE MEDICAL EQUIPMENT.—In the case of covered items (as defined in section 1834(a)(13)) for which payment would otherwise be made under section 1834(a) that are furnished with respect to competitive bid contracts that begin on or after January 1, 2017, payment under this section for such items may not exceed the amount that would otherwise be paid for such items under section 1834 (without the application of subsection (a)(1)(F) of such section) if such items and services were furnished on January 1, 2015, updated by the covered item update described in section 1834(a)(14)(L) for the year in which such covered item is furnished.”.

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

806 Fracture of vertebral column with spinal cord injury

- 806.0 Closed fracture of cervical vertebra with spinal cord injury
 - 806.00 Closed fracture of C1-C4 level with unspecified spinal cord injury
 - 806.01 Closed fracture of C1-C4 level with complete lesion of cord
 - 806.02 Closed fracture of C1-C4 level with anterior cord syndrome
 - 806.03 Closed fracture of C1-C4 level with central cord syndrome
 - 806.04 Closed fracture of C1-C4 level with other specified spinal cord injury
 - 806.05 Closed fracture of C5-C7 level with unspecified spinal cord injury
 - 806.06 Closed fracture of C5-C7 level with complete lesion of cord
 - 806.07 Closed fracture of C5-C7 level with anterior cord syndrome
 - 806.08 Closed fracture of C5-C7 level with central cord syndrome
 - 806.09 Closed fracture of C5-C7 level with other specified spinal cord injury
- 806.1 Open fracture of cervical vertebra with spinal cord injury
 - 806.10 Open fracture of C1-C4 level with unspecified spinal cord injury
 - 806.11 Open fracture of C1-C4 level with complete lesion of cord
 - 806.12 Open fracture of C1-C4 level with anterior cord syndrome
 - 806.13 Open fracture of C1-C4 level with central cord syndrome
 - 806.14 Open fracture of C1-C4 level with other specified spinal cord injury
 - 806.15 Open fracture of C5-C7 level with unspecified spinal cord injury
 - 806.16 Open fracture of C5-C7 level with complete lesion of cord
 - 806.17 Open fracture of C5-C7 level with anterior cord syndrome
 - 806.18 Open fracture of C5-C7 level with central cord syndrome
 - 806.19 Open fracture of C5-C7 level with other specified spinal cord injury
- 806.2 Closed fracture of dorsal vertebra with spinal cord injury
 - 806.20 Closed fracture of T1-T6 level with unspecified spinal cord injury
 - 806.21 Closed fracture of T1-T6 level with complete lesion of cord
 - 806.22 Closed fracture of T1-T6 level with anterior cord syndrome
 - 806.23 Closed fracture of T1-T6 level with central cord syndrome
 - 806.24 Closed fracture of T1-T6 level with other specified spinal cord injury
 - 806.25 Closed fracture of T7-T12 level with unspecified spinal cord injury
 - 806.26 Closed fracture of T7-T12 level with complete lesion of cord
 - 806.27 Closed fracture of T7-T12 level with anterior cord syndrome
 - 806.28 Closed fracture of T7-T12 level with central cord syndrome
 - 806.29 Closed fracture of T7-T12 level with other specified spinal cord injury
- 806.3 Open fracture of dorsal vertebra with spinal cord injury
 - 806.30 Open fracture of T1-T6 level with unspecified spinal cord injury
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 - 806.32 Open fracture of T1-T6 level with anterior cord syndrome
 - 806.33 Open fracture of T1-T6 level with central cord syndrome
 - 806.34 Open fracture of T1-T6 level with other specified spinal cord injury
 - 806.35 Open fracture of T7-T12 level with unspecified spinal cord injury
 - 806.36 Open fracture of T7-T12 level with complete lesion of cord
 - 806.37 Open fracture of T7-T12 level with anterior cord syndrome
 - 806.38 Open fracture of T7-T12 level with central cord syndrome
 - 806.39 Open fracture of T7-T12 level with other specified spinal cord injury
- 806.4 Closed fracture of lumbar spine with spinal cord injury

- 806.5 Open fracture of lumbar spine with spinal cord injury
- 806.6 Closed fracture of sacrum and coccyx with spinal cord injury
 - 806.60 Closed fracture of sacrum and coccyx with unspecified spinal cord injury
 - 806.61 Closed fracture of sacrum and coccyx with complete cauda equina lesion
 - 806.62 Closed fracture of sacrum and coccyx with other cauda equina injury
 - 806.69 Closed fracture of sacrum and coccyx with other spinal cord injury
- 806.7 Open fracture of sacrum and coccyx with spinal cord injury
 - 806.70 Open fracture of sacrum and coccyx with unspecified spinal cord injury
 - 806.71 Open fracture of sacrum and coccyx with complete cauda equina lesion
 - 806.72 Open fracture of sacrum and coccyx with other cauda equina injury
 - 806.79 Open fracture of sacrum and coccyx with other spinal cord injury
- 806.8 Closed fracture of unspecified vertebral column with spinal cord injury
- 806.9 Open fracture of unspecified vertebral column with spinal cord injury

952 Spinal cord injury without evidence of spinal bone injury

- 952.0 Cervical spinal cord injury without evidence of spinal bone injury
- 952.1 Dorsal (thoracic) spinal cord injury without evidence of spinal bone injury
- 952.2 Lumbar spinal cord injury without evidence of spinal bone injury
- 952.3 Sacral spinal cord injury without evidence of spinal bone injury convert
- 952.4 Cauda equina spinal cord injury without evidence of spinal bone injury
- 952.8 Multiple sites of spinal cord injury without evidence of spinal bone injury
- 952.9 Unspecified site of spinal cord injury without evidence of spinal bone injury

Acquired brain injuries:

854 Intracranial injury of other and unspecified nature

- 854.0 Intracranial injury of other and unspecified nature without mention of open intracranial wound
 - 854.00 Intracranial injury of other and unspecified nature without mention of open intracranial wound, u
 - 854.01 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
 - 854.02 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
 - 854.03 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
 - 854.04 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
 - 854.05 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
 - 854.06 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
 - 854.09 Intracranial injury of other and unspecified nature without mention of open intracranial wound, w
- 854.1 Intracranial injury of other and unspecified nature with open intracranial wound
 - 854.10 Intracranial injury of other and unspecified nature with open intracranial wound, unspecified state
 - 854.11 Intracranial injury of other and unspecified nature with open intracranial wound, with no loss of c
 - 854.12 Intracranial injury of other and unspecified nature with open intracranial wound, with brief [less tl
 - 854.13 Intracranial injury of other and unspecified nature with open intracranial wound, with moderate [
 - 854.14 Intracranial injury of other and unspecified nature with open intracranial wound, with prolonged [
 - 854.15 Intracranial injury of other and unspecified nature with open intracranial wound, with prolonged [
 - 854.16 Intracranial injury of other and unspecified nature with open intracranial wound, with loss of cons
 - 854.19 Intracranial injury of other and unspecified nature with open intracranial wound, with concussion,

348 Other conditions of brain

- 348.0 Cerebral cysts

- 348.1 Anoxic brain damage
- 348.2 Benign intracranial hypertension
- 348.3 Encephalopathy, not elsewhere classified
 - 348.30 Encephalopathy, unspecified
 - 348.31 Metabolic encephalopathy
 - 348.39 Other encephalopathy
- 348.4 Compression of brain
- 348.5 Cerebral edema
- 348.8 Other conditions of brain
 - 348.81 Temporal sclerosis
 - 348.82 Brain death
 - 348.89 Other conditions of brain
- 348.9 Unspecified condition of brain

349 Other and unspecified disorders of the nervous system

- 349.0 Reaction to spinal or lumbar puncture
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- 349.2 Disorders of meninges, not elsewhere classified
- 349.3 Dural tear
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 - 349.39 Other dural tear
- 349.8 Other specified disorders of nervous system
 - 349.81 Cerebrospinal fluid rhinorrhea
 - 349.82 Toxic encephalopathy
 - 349.89 Other specified disorders of nervous system
- 349.9 Unspecified disorders of nervous system

Other paralyzing neuromuscular conditions:

330 Cerebral degenerations usually manifest in childhood

- 330.0 Leukodystrophy
- 330.1 Cerebral lipidoses
- 330.2 Cerebral degeneration in generalized lipidoses
- 330.3 Cerebral degeneration of childhood in other diseases classified elsewhere
- 330.8 Other specified cerebral degenerations in childhood
- 330.9 Unspecified cerebral degeneration in childhood

332 Parkinson's disease

- 332.0 Paralysis agitans
- 332.1 Secondary parkinsonism

336 Other diseases of spinal cord

- 336.0 Syringomyelia and syringobulbia
- 336.1 Vascular myelopathies
- 336.2 Subacute combined degeneration of spinal cord in diseases classified elsewhere
- 336.3 Myelopathy in other diseases classified elsewhere
- 336.8 Other myelopathy

336.9 Unspecified disease of spinal cord

340 Multiple sclerosis

341 Other demyelinating diseases of central nervous system

341.0 Neuromyelitis optica

341.1 Schilder's disease

341.2 Acute (transverse) myelitis

341.20 Acute (transverse) myelitis NOS

341.21 Acute (transverse) myelitis in conditions classified elsewhere

341.22 Idiopathic transverse myelitis

341.8 Other demyelinating diseases of central nervous system

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344 Other paralytic syndromes

344.0 Quadriplegia and quadraparesis

344.00 Quadriplegia, unspecified

344.01 Quadriplegia, C1-C4, complete

344.02 Quadriplegia, C1-C4, incomplete

344.03 Quadriplegia, C5-C7, complete

344.04 Quadriplegia, C5-C7, incomplete

344.09 Other quadriplegia

344.1 Paraplegia

344.2 Diplegia of upper limbs

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344.30 Monoplegia of lower limb affecting unspecified side

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344.4 Monoplegia of upper limb

344.40 Monoplegia of upper limb affecting unspecified side

344.41 Monoplegia of upper limb affecting dominant side

344.42 Monoplegia of upper limb affecting nondominant side

344.5 Unspecified monoplegia

344.6 Cauda equina syndrome

344.60 Cauda equina syndrome without mention of neurogenic bladder

344.61 Cauda equina syndrome with neurogenic bladder

344.8 Other specified paralytic syndromes

344.81 Locked-in state

344.89 Other specified paralytic syndrome

344.9 Paralysis, unspecified

806 Fracture of vertebral column with spinal cord injury
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806.00 Closed fracture of C1-C4 level with unspecified spinal cord injury
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806.1 Open fracture of cervical vertebra with spinal cord injury
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344.81 Locked-in state

344.89 Other specified paralytic syndrome

344.9 Paralysis, unspecified

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114TH CONGRESS
2D SESSION

H. R. _____

To amend title XVIII of the Social Security Act to provide for a temporary exception to the application of the Medicare long-term care hospital site neutral provisions for certain spinal cord specialty hospitals.

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 provide for a temporary exception to the application of the Medicare long-term care hospital site neutral provisions for certain spinal cord specialty hospitals.

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. TEMPORARY EXCEPTION TO THE APPLICATION**
2 **OF THE MEDICARE LTCH SITE NEUTRAL PRO-**
3 **VISIONS FOR CERTAIN SPINAL CORD SPE-**
4 **CIALTY HOSPITALS.**

5 (a) EXCEPTION.—Section 1886(m)(6) of the Social
6 Security Act (42 U.S.C. 1395ww(m)(6)) is amended—

7 (1) in subparagraph (A)(i) by striking “and
8 (E)” and inserting “, (E), and (F)”; and

9 (2) by adding at the end the following new sub-
10 paragraph:

11 “(F) TEMPORARY EXCEPTION FOR CER-
12 TAIN SPINAL CORD SPECIALTY HOSPITALS.—
13 For discharges in cost reporting periods begin-
14 ning during fiscal years 2018 through 2023,
15 subparagraph (A)(i) shall not apply (and pay-
16 ment shall be made to a long-term care hospital
17 without regard to this paragraph) if such dis-
18 charge is from a long-term care hospital that,
19 in its cost reporting period that began during
20 fiscal year 2014, met each of the following re-
21 quirements:

22 “(i) NOT-FOR-PROFIT.—The long-
23 term care hospital was a not-for-profit
24 long-term care hospital.

25 “(ii) PRIMARILY PROVIDING TREAT-
26 MENT FOR CATASTROPHIC SPINAL CORD

1 OR ACQUIRED BRAIN INJURIES OR OTHER
2 PARALYZING NEUROMUSCULAR CONDI-
3 TIONS.—At least 50 percent of the dis-
4 charges from the long-term care hospital
5 were classified under MS–LTCH–DRGs
6 28, 29, 52, 57, 551, 573, or 963.

7 “(iii) SIGNIFICANT OUT-OF-STATE AD-
8 MISSIONS.—The long-term care hospital
9 admitted inpatients (including both indi-
10 viduals entitled to, or enrolled for benefits
11 under this title and individuals not so enti-
12 tled or enrolled) from at least 20 of the 50
13 States, determined based on such data,
14 submitted by the hospital to the Secretary,
15 as the Secretary may require. Notwith-
16 standing any other provision of law, the
17 Secretary may implement the previous sen-
18 tence by program instruction or other-
19 wise.”.

20 (b) STUDY AND REPORT ON THE STATUS AND VIA-
21 BILITY OF CERTAIN SPINAL CORD SPECIALTY LONG-
22 TERM CARE HOSPITALS.—

23 (1) STUDY.—The Comptroller General of the
24 United States shall conduct a study on the status
25 and viability of long-term care hospitals described in

1 section 1886(m)(6)(F) of the Social Security Act, as
2 added by subsection (a). Such report shall include
3 an analysis of the following:

4 (A) Challenges related to classification and
5 facility licensure by State agencies for such
6 long-term care hospitals, as demonstrated by
7 such hospitals.

8 (B) The adequacy of Medicare payment
9 rates for such long-term care hospitals.

10 (C) Utilization data to determine the prev-
11 alence of Medicare beneficiaries who have been
12 diagnosed with catastrophic spinal cord or ac-
13 quired brain injuries or other paralyzing neuro-
14 muscular conditions.

15 (2) REPORT.—Not later than September 30,
16 2023, the Comptroller General shall submit to Con-
17 gress a report on the study conducted under para-
18 graph (1), together with recommendations for such
19 legislation and administrative action as the Comp-
20 troller General determines appropriate.

[DISCUSSION DRAFT]

1 **SEC. ____ . TRANSITIONAL PAYMENT RULES FOR CERTAIN**
2 **RADIATION THERAPY SERVICES UNDER THE**
3 **MEDICARE PHYSICIAN FEE SCHEDULE.**

4 (a) IN GENERAL.—Section 1848 of the Social Secu-
5 rity Act (42 U.S.C. 1395w–4) is amended—

6 (1) in subsection (b), by adding at the end the
7 following new paragraph:

8 “(9) SPECIAL RULE FOR CERTAIN RADIATION
9 THERAPY SERVICES.—The code definitions, the work
10 relative value units under subsection (c)(2)(C)(i),
11 and the direct inputs for the practice expense rel-
12 ative value units under subsection (c)(2)(C)(ii) for
13 radiation treatment delivery and related imaging
14 services (identified in 2016 by HCPCS G-codes
15 G6001 through G6015) for the fee schedule estab-
16 lished under this subsection for services furnished in
17 2017 and 2018 shall be the same as such defini-
18 tions, units, and inputs for such services for the fee
19 schedule established for services furnished in 2016.”;
20 and

21 (2) in subsection (c)(2)(K), by adding at the
22 end the following new clause:

1 “(iii) TREATMENT OF CERTAIN RADI-
2 ATION THERAPY SERVICES.—Radiation
3 treatment delivery and related imaging
4 services identified under subsection (b)(9)
5 shall not be considered as potentially
6 misvalued services for purposes of this sub-
7 paragraph and subparagraph (O) for 2017
8 and 2018.”.

9 (b) REPORT TO CONGRESS ON ALTERNATIVE PAY-
10 MENT MODEL.—Not later than 18 months after the date
11 of the enactment of this Act, the Secretary of Health and
12 Human Services shall submit to Congress a report on the
13 development of an episodic alternative payment model for
14 payment under the Medicare program under title XVIII
15 of the Social Security Act for radiation therapy services
16 furnished in nonfacility settings.

From: DiBlasio, Carla
To: [Burney, Ira \(CMS/OL\)](#)
Cc: [jordan_bartolomeo@isakson.senate.gov](#); Street, Amanda; Graff, Caleb; Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation
Date: Wednesday, June 29, 2016 11:13:19 AM

Thanks so much, Ira!

Let's do 2:00 pm.

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Wednesday, June 29, 2016 11:02 AM
To: DiBlasio, Carla
Cc: [jordan_bartolomeo@isakson.senate.gov](#); Street, Amanda; Graff, Caleb; Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: Re: Follow-up to Yesterday's Conversation

Sorry, meant to respond last night but juggling schedule. How about a call at 2 or 3 pm today?

On Jun 29, 2016, at 10:50 AM, DiBlasio, Carla <Carla.Diblasio@mail.house.gov> wrote:

Sorry to be a pest. Any chance we can do a quick call on this?

We are really under the gun to hit a tough deadline, so we *greatly* appreciate all of your help!

Thanks so much!

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 10:00 PM
To: 'Burney, Ira (CMS/OL)'; '[jordan_bartolomeo@isakson.senate.gov](#)'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Thanks again, Ira.

I took a look at your helpful notes. I have a couple questions, and I'm sure my colleagues may have questions, as well.

Do you have time for a follow-up call tomorrow?

Thanks so much!

Carla

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Tuesday, June 28, 2016 6:40 PM
To: DiBlasio, Carla; '[jordan_bartolomeo@isakson.senate.gov](#)'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)

Subject: RE: Follow-up to Yesterday's Conversation

We've thought about your questions about language and the diagnosis codes you sent. Attached are some thoughts. Please let us know if you would like to discuss.

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Tuesday, June 28, 2016 4:36 PM
To: Burney, Ira (CMS/OL); 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Hey all,

My apologies for multiple emails today. However, I just got off the phone with the W&M Committee and learned that we need to finalize this language by COB *this Thursday*, in order to introduce it during the pro forma session this Friday at 9:00 am, in time for the W&M markup early next week. Our sincere apologies for this challenging timeline - we were taken by surprise ourselves. We also still need to circle back with CBO before introduction on Friday.

Any feedback you can provide at your earliest convenience would be greatly appreciated.

Thanks so much!!

Carla

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 12:47 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: 'Druckman, Jennifer (CMS/OL)'; 'OToole, Meghan (CMS/OL)'
Subject: RE: Follow-up to Yesterday's Conversation

Good afternoon,

I've attached the complete list of codes that the relevant facilities commonly use, intended for inclusion in the language. This is a lengthy list. What are your thoughts on this list of codes? And how do you recommend we incorporate this lengthy list into our language?

Many thanks for your helpful feedback.

From: DiBlasio, Carla
Sent: Friday, June 24, 2016 7:20 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Thanks so much, Ira!

Wow, this is a lot of codes. Thanks for taking the time to do this. The cost reporting for one facility starts in October and another starts in April.

You mentioned that you're not confident that the current language would include only the intended hospitals and that the intended hospitals would be able to meet the requirements. We would like to do everything we can to tighten up the language so it captures these facilities, and we welcome any additional recommendations you may have.

Have a wonderful weekend!

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Friday, June 24, 2016 5:25 PM
To: DiBlasio, Carla; jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: Follow-up to Yesterday's Conversation

We took a quick look at the diagnosis codes that could fit under “catastrophic spinal cord or acquired brain injuries or other paralyzing neuromuscular conditions.”

We have initially looked at ICD-9 codes since those codes would seem to apply for cost reporting periods beginning during FY 2015. However, since the ICD-10 codes were implemented for services furnished beginning with October 1, 2015, it is possible that ICD-10 codes might also have to be looked at (or the base period moved to a year earlier to avoid this issue). Do you know when the cost reporting period begins for the targeted facilities?

We have not run these ICD-9 codes by the program experts yet, but wanted to get something to you today. The codes are listed below, and it is possible that other codes could also apply. It would be a rulemaking issue for the Secretary to identify the specific diagnosis codes that would fit under these conditions.

We are not confident that the current language would include only the intended hospitals and that the intended hospitals would be able to meet the requirements.

Catastrophic spinal cord:

806 Fracture of vertebral column with spinal cord injury

- 806.0 Closed fracture of cervical vertebra with spinal cord injury
 - 806.00 Closed fracture of C1-C4 level with unspecified spinal cord injury
 - 806.01 Closed fracture of C1-C4 level with complete lesion of cord
 - 806.02 Closed fracture of C1-C4 level with anterior cord syndrome
 - 806.03 Closed fracture of C1-C4 level with central cord syndrome
 - 806.04 Closed fracture of C1-C4 level with other specified spinal cord injury
 - 806.05 Closed fracture of C5-C7 level with unspecified spinal cord injury
 - 806.06 Closed fracture of C5-C7 level with complete lesion of cord
 - 806.07 Closed fracture of C5-C7 level with anterior cord syndrome
 - 806.08 Closed fracture of C5-C7 level with central cord syndrome
 - 806.09 Closed fracture of C5-C7 level with other specified spinal cord injury
- 806.1 Open fracture of cervical vertebra with spinal cord injury
 - 806.10 Open fracture of C1-C4 level with unspecified spinal cord injury
 - 806.11 Open fracture of C1-C4 level with complete lesion of cord
 - 806.12 Open fracture of C1-C4 level with anterior cord syndrome
 - 806.13 Open fracture of C1-C4 level with central cord syndrome
 - 806.14 Open fracture of C1-C4 level with other specified spinal cord injury
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 - 806.16 Open fracture of C5-C7 level with complete lesion of cord
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 - 806.18 Open fracture of C5-C7 level with central cord syndrome
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- 806.2 Closed fracture of dorsal vertebra with spinal cord injury
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 - 806.22 Closed fracture of T1-T6 level with anterior cord syndrome
 - 806.23 Closed fracture of T1-T6 level with central cord syndrome
 - 806.24 Closed fracture of T1-T6 level with other specified spinal cord injury
 - 806.25 Closed fracture of T7-T12 level with unspecified spinal cord injury
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 - 806.29 Closed fracture of T7-T12 level with other specified spinal cord injury
- 806.3 Open fracture of dorsal vertebra with spinal cord injury
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 - 806.32 Open fracture of T1-T6 level with anterior cord syndrome
 - 806.33 Open fracture of T1-T6 level with central cord syndrome
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- 806.4 Closed fracture of lumbar spine with spinal cord injury
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 - 806.62 Closed fracture of sacrum and coccyx with other cauda equina injury
 - 806.69 Closed fracture of sacrum and coccyx with other spinal cord injury
- 806.7 Open fracture of sacrum and coccyx with spinal cord injury
 - 806.70 Open fracture of sacrum and coccyx with unspecified spinal cord injury
 - 806.71 Open fracture of sacrum and coccyx with complete cauda equina lesion
 - 806.72 Open fracture of sacrum and coccyx with other cauda equina injury
 - 806.79 Open fracture of sacrum and coccyx with other spinal cord injury
- 806.8 Closed fracture of unspecified vertebral column with spinal cord injury
- 806.9 Open fracture of unspecified vertebral column with spinal cord injury

952 Spinal cord injury without evidence of spinal bone injury

- 952.0 Cervical spinal cord injury without evidence of spinal bone injury
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- 952.2 Lumbar spinal cord injury without evidence of spinal bone injury
- 952.3 Sacral spinal cord injury without evidence of spinal bone injury convert
- 952.4 Cauda equina spinal cord injury without evidence of spinal bone injury
- 952.8 Multiple sites of spinal cord injury without evidence of spinal bone injury
- 952.9 Unspecified site of spinal cord injury without evidence of spinal bone injury

Acquired brain injuries:

854 Intracranial injury of other and unspecified nature

- 854.0 Intracranial injury of other and unspecified nature without mention of open intracranial wound
 - 854.00 Intracranial injury of other and unspecified nature without mention of open intracranial wound, unspecified state of consciousness
 - 854.01 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with no loss of consciousness
 - 854.02 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with brief [less than one hour] loss of consciousness
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 - 854.04 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with prolonged [more than 24 hours] loss of consciousness and return to pre-existing conscious level
 - 854.05 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with prolonged [more than 24 hours] loss of consciousness without return to pre-existing conscious level
 - 854.06 Intracranial injury of other and unspecified nature without mention of

- open intracranial wound, with loss of consciousness of unspecified duration
- 854.09 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with concussion, unspecified
- 854.1 Intracranial injury of other and unspecified nature with open intracranial wound
 - 854.10 Intracranial injury of other and unspecified nature with open intracranial wound, unspecified state of consciousness
 - 854.11 Intracranial injury of other and unspecified nature with open intracranial wound, with no loss of consciousness
 - 854.12 Intracranial injury of other and unspecified nature with open intracranial wound, with brief [less than one hour] loss of consciousness
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 - 854.15 Intracranial injury of other and unspecified nature with open intracranial wound, with prolonged [more than 24 hours] loss of consciousness without return to pre-existing conscious level
 - 854.16 Intracranial injury of other and unspecified nature with open intracranial wound, with loss of consciousness of unspecified duration
 - 854.19 Intracranial injury of other and unspecified nature with open intracranial wound, with concussion, unspecified

348 Other conditions of brain

- 348.0 Cerebral cysts
- 348.1 Anoxic brain damage
- 348.2 Benign intracranial hypertension
- 348.3 Encephalopathy, not elsewhere classified
 - 348.30 Encephalopathy, unspecified
 - 348.31 Metabolic encephalopathy
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- 348.8 Other conditions of brain
 - 348.81 Temporal sclerosis
 - 348.82 Brain death
 - 348.89 Other conditions of brain
- 348.9 Unspecified condition of brain

349 Other and unspecified disorders of the nervous system

- 349.0 Reaction to spinal or lumbar puncture
- 349.1 Nervous system complications from surgically implanted device
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Other paralyzing neuromuscular conditions:

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- 330.1 Cerebral lipidoses
- 330.2 Cerebral degeneration in generalized lipidoses
- 330.3 Cerebral degeneration of childhood in other diseases classified elsewhere
- 330.8 Other specified cerebral degenerations in childhood
- 330.9 Unspecified cerebral degeneration in childhood

332 Parkinson's disease

- 332.0 Paralysis agitans
- 332.1 Secondary parkinsonism

336 Other diseases of spinal cord

- 336.0 Syringomyelia and syringobulbia
- 336.1 Vascular myelopathies
- 336.2 Subacute combined degeneration of spinal cord in diseases classified elsewhere
- 336.3 Myelopathy in other diseases classified elsewhere
- 336.8 Other myelopathy
- 336.9 Unspecified disease of spinal cord

340 Multiple sclerosis

341 Other demyelinating diseases of central nervous system

- 341.0 Neuromyelitis optica
- 341.1 Schilder's disease
- 341.2 Acute (transverse) myelitis
 - 341.20 Acute (transverse) myelitis NOS
 - 341.21 Acute (transverse) myelitis in conditions classified elsewhere
 - 341.22 Idiopathic transverse myelitis
- 341.8 Other demyelinating diseases of central nervous system
- 341.9 Demyelinating disease of central nervous system, unspecified

344 Other paralytic syndromes

- 344.0 Quadriplegia and quadraparesis
 - 344.00 Quadriplegia, unspecified
 - 344.01 Quadriplegia, C1-C4, complete

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- 344.09 Other quadriplegia
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 - 344.30 Monoplegia of lower limb affecting unspecified side
 - 344.31 Monoplegia of lower limb affecting dominant side
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From: DiBlasio, Carla
To: [Burney, Ira \(CMS/OL\)](#); ["jordan_bartolomeo@isakson.senate.gov"](#); [Street, Amanda](#); [Graff, Caleb](#)
Cc: [Druckman, Jennifer \(CMS/OL\)](#); [OToole, Meghan \(CMS/OL\)](#)
Subject: RE: Follow-up to Yesterday's Conversation
Date: Wednesday, June 29, 2016 10:50:43 AM

Sorry to be a pest. Any chance we can do a quick call on this?

We are really under the gun to hit a tough deadline, so we *greatly* appreciate all of your help!

Thanks so much!

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 10:00 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Thanks again, Ira.

I took a look at your helpful notes. I have a couple questions, and I'm sure my colleagues may have questions, as well.

Do you have time for a follow-up call tomorrow?

Thanks so much!

Carla

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Tuesday, June 28, 2016 6:40 PM
To: DiBlasio, Carla; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

We've thought about your questions about language and the diagnosis codes you sent. Attached are some thoughts. Please let us know if you would like to discuss.

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Tuesday, June 28, 2016 4:36 PM
To: Burney, Ira (CMS/OL); 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Hey all,

My apologies for multiple emails today. However, I just got off the phone with the W&M Committee and learned that we need to finalize this language by COB *this Thursday*, in order to introduce it during the pro forma session this Friday at 9:00 am, in time for the W&M markup early next week. Our sincere apologies for this challenging timeline - we were taken by surprise ourselves. We also still need to circle back with CBO before introduction on Friday.

Any feedback you can provide at your earliest convenience would be greatly appreciated.

Thanks so much!!

Carla

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 12:47 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: 'Druckman, Jennifer (CMS/OL)'; 'OToole, Meghan (CMS/OL)'
Subject: RE: Follow-up to Yesterday's Conversation

Good afternoon,

I've attached the complete list of codes that the relevant facilities commonly use, intended for inclusion in the language. This is a lengthy list. What are your thoughts on this list of codes? And how do you recommend we incorporate this lengthy list into our language?

Many thanks for your helpful feedback.

From: DiBlasio, Carla
Sent: Friday, June 24, 2016 7:20 PM
To: 'Burney, Ira (CMS/OL)'; jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
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Sent: Friday, June 24, 2016 5:25 PM

To: DiBlasio, Carla; jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb

Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)

Subject: Follow-up to Yesterday's Conversation

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- 806.2 Closed fracture of dorsal vertebra with spinal cord injury
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 - 806.70 Open fracture of sacrum and coccyx with unspecified spinal cord injury
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 - 806.72 Open fracture of sacrum and coccyx with other cauda equina injury
 - 806.79 Open fracture of sacrum and coccyx with other spinal cord injury
- 806.8 Closed fracture of unspecified vertebral column with spinal cord injury
- 806.9 Open fracture of unspecified vertebral column with spinal cord injury

952 Spinal cord injury without evidence of spinal bone injury

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- 952.1 Dorsal (thoracic) spinal cord injury without evidence of spinal bone injury
- 952.2 Lumbar spinal cord injury without evidence of spinal bone injury
- 952.3 Sacral spinal cord injury without evidence of spinal bone injury convert
- 952.4 Cauda equina spinal cord injury without evidence of spinal bone injury
- 952.8 Multiple sites of spinal cord injury without evidence of spinal bone injury
- 952.9 Unspecified site of spinal cord injury without evidence of spinal bone injury

Acquired brain injuries:

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854.0 Intracranial injury of other and unspecified nature without mention of open intracranial wound

854.00 Intracranial injury of other and unspecified nature without mention of open intracranial wound, unspecified state of consciousness

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854.16 Intracranial injury of other and unspecified nature with open intracranial wound, with loss of consciousness of unspecified duration

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348 Other conditions of brain

348.0 Cerebral cysts

348.1 Anoxic brain damage

- 348.2 Benign intracranial hypertension
- 348.3 Encephalopathy, not elsewhere classified
 - 348.30 Encephalopathy, unspecified
 - 348.31 Metabolic encephalopathy
 - 348.39 Other encephalopathy
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349 Other and unspecified disorders of the nervous system

- 349.0 Reaction to spinal or lumbar puncture
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Other paralyzing neuromuscular conditions:

-

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- 330.3 Cerebral degeneration of childhood in other diseases classified elsewhere
- 330.8 Other specified cerebral degenerations in childhood
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-

332 Parkinson's disease

- 332.0 Paralysis agitans
- 332.1 Secondary parkinsonism

336 Other diseases of spinal cord

- 336.0 Syringomyelia and syringobulbia
- 336.1 Vascular myelopathies
- 336.2 Subacute combined degeneration of spinal cord in diseases classified elsewhere
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- 336.9 Unspecified disease of spinal cord

340 Multiple sclerosis

341 Other demyelinating diseases of central nervous system

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Subject: RE: Follow-up to Yesterday's Conversation
Date: Tuesday, June 28, 2016 10:00:25 PM

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Carla

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Sent: Tuesday, June 28, 2016 6:40 PM
To: DiBlasio, Carla; ["jordan_bartolomeo@isakson.senate.gov"](#); [Street, Amanda](#); [Graff, Caleb](#)
Cc: [Druckman, Jennifer \(CMS/OL\)](#); [OToole, Meghan \(CMS/OL\)](#)
Subject: RE: Follow-up to Yesterday's Conversation

We've thought about your questions about language and the diagnosis codes you sent. Attached are some thoughts. Please let us know if you would like to discuss.

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Tuesday, June 28, 2016 4:36 PM
To: Burney, Ira (CMS/OL); ["jordan_bartolomeo@isakson.senate.gov"](#); [Street, Amanda](#); [Graff, Caleb](#)
Cc: [Druckman, Jennifer \(CMS/OL\)](#); [OToole, Meghan \(CMS/OL\)](#)
Subject: RE: Follow-up to Yesterday's Conversation

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Thanks so much!!

Carla

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Good afternoon,

I've attached the complete list of codes that the relevant facilities commonly use, intended for inclusion in the language. This is a lengthy list. What are your thoughts on this list of codes? And how do you recommend we incorporate this lengthy list into our language?

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Have a wonderful weekend!

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501

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 - 806.69 Closed fracture of sacrum and coccyx with other spinal cord injury
- 806.7 Open fracture of sacrum and coccyx with spinal cord injury
 - 806.70 Open fracture of sacrum and coccyx with unspecified spinal cord injury
 - 806.71 Open fracture of sacrum and coccyx with complete cauda equina lesion
 - 806.72 Open fracture of sacrum and coccyx with other cauda equina injury
 - 806.79 Open fracture of sacrum and coccyx with other spinal cord injury
- 806.8 Closed fracture of unspecified vertebral column with spinal cord injury
- 806.9 Open fracture of unspecified vertebral column with spinal cord injury

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- 952.2 Lumbar spinal cord injury without evidence of spinal bone injury
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- 952.8 Multiple sites of spinal cord injury without evidence of spinal bone injury
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Acquired brain injuries:

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- 348.0 Cerebral cysts
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 - 348.82 Brain death

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-

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- 336.3 Myelopathy in other diseases classified elsewhere
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340 Multiple sclerosis

341 Other demyelinating diseases of central nervous system

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- 341.1 Schilder's disease
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 - 341.20 Acute (transverse) myelitis NOS

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344 Other paralytic syndromes

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 - 344.00 Quadriplegia, unspecified
 - 344.01 Quadriplegia, C1-C4, complete
 - 344.02 Quadriplegia, C1-C4, incomplete
 - 344.03 Quadriplegia, C5-C7, complete
 - 344.04 Quadriplegia, C5-C7, incomplete
 - 344.09 Other quadriplegia
- 344.1 Paraplegia
- 344.2 Diplegia of upper limbs
- 344.3 Monoplegia of lower limb
 - 344.30 Monoplegia of lower limb affecting unspecified side
 - 344.31 Monoplegia of lower limb affecting dominant side
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- 344.5 Unspecified monoplegia
- 344.6 Cauda equina syndrome
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 - 344.81 Locked-in state
 - 344.89 Other specified paralytic syndrome
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Cc: [Druckman, Jennifer \(CMS/OL\); OToole, Meghan \(CMS/OL\)](mailto:Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL))
Subject: RE: Follow-up to Yesterday's Conversation
Date: Tuesday, June 28, 2016 6:42:07 PM

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Acquired brain injuries:

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348 Other conditions of brain

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- 344.0 Quadriplegia and quadraparesis
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- 344.01 Quadriplegia, C1-C4, complete
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- 344.8 Other specified paralytic syndromes
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From: DiBlasio, Carla
To: [Burney, Ira \(CMS/OL\)](#); ["jordan_bartolomeo@isakson.senate.gov"](#); [Street, Amanda](#); [Graff, Caleb](#)
Cc: [Druckman, Jennifer \(CMS/OL\)](#); [OToole, Meghan \(CMS/OL\)](#)
Subject: RE: Follow-up to Yesterday's Conversation
Date: Tuesday, June 28, 2016 4:36:50 PM

Hey all,

My apologies for multiple emails today. However, I just got off the phone with the W&M Committee and learned that we need to finalize this language by COB *this Thursday*, in order to introduce it during the pro forma session this Friday at 9:00 am, in time for the W&M markup early next week. Our sincere apologies for this challenging timeline - we were taken by surprise ourselves. We also still need to circle back with CBO before introduction on Friday.

Any feedback you can provide at your earliest convenience would be greatly appreciated.

Thanks so much!!

Carla

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 12:47 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: 'Druckman, Jennifer (CMS/OL)'; 'OToole, Meghan (CMS/OL)'
Subject: RE: Follow-up to Yesterday's Conversation

Good afternoon,

I've attached the complete list of codes that the relevant facilities commonly use, intended for inclusion in the language. This is a lengthy list. What are your thoughts on this list of codes? And how do you recommend we incorporate this lengthy list into our language?

Many thanks for your helpful feedback.

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Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
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facilities, and we welcome any additional recommendations you may have.

Have a wonderful weekend!

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501

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Sent: Friday, June 24, 2016 5:25 PM
To: DiBlasio, Carla; jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: Follow-up to Yesterday's Conversation

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We have not run these ICD-9 codes by the program experts yet, but wanted to get something to you today. The codes are listed below, and it is possible that other codes could also apply. It would be a rulemaking issue for the Secretary to identify the specific diagnosis codes that would fit under these conditions.

We are not confident that the current language would include only the intended hospitals and that the intended hospitals would be able to meet the requirements.

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 - 806.79 Open fracture of sacrum and coccyx with other spinal cord injury

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Acquired brain injuries:

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Cc: [Druckman, Jennifer \(CMS/OL\)](#); [OToole, Meghan \(CMS/OL\)](#)
Subject: RE: Follow-up to Yesterday's Conversation
Date: Tuesday, June 28, 2016 12:47:24 PM
Attachments: [HOSPITAL ICD CODES FOR PILOT.XLSX](#)

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From: DiBlasio, Carla
To: [Burney, Ira \(CMS/OL\)](mailto:Burney_Ira_CMS_OL); jordan_bartolomeo@isakson.senate.gov; [Street, Amanda](mailto:Street_Amanda); [Graff, Caleb](mailto:Graff_Caleb)
Cc: [Druckman, Jennifer \(CMS/OL\)](mailto:Druckman_Jennifer_CMS_OL); [OToole, Meghan \(CMS/OL\)](mailto:OToole_Meghan_CMS_OL)
Subject: RE: Follow-up to Yesterday's Conversation
Date: Friday, June 24, 2016 7:19:59 PM

Thanks so much, Ira!

Wow, this is a lot of codes. Thanks for taking the time to do this. The cost reporting for one facility starts in October and another starts in April.

You mentioned that you're not confident that the current language would include only the intended hospitals and that the intended hospitals would be able to meet the requirements. We would like to do everything we can to tighten up the language so it captures these facilities, and we welcome any additional recommendations you may have.

Have a wonderful weekend!

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Friday, June 24, 2016 5:25 PM
To: DiBlasio, Carla; jordan_bartolomeo@isakson.senate.gov; [Street, Amanda](mailto:Street_Amanda); [Graff, Caleb](mailto:Graff_Caleb)
Cc: [Druckman, Jennifer \(CMS/OL\)](mailto:Druckman_Jennifer_CMS_OL); [OToole, Meghan \(CMS/OL\)](mailto:OToole_Meghan_CMS_OL)
Subject: Follow-up to Yesterday's Conversation

We took a quick look at the diagnosis codes that could fit under "catastrophic spinal cord or acquired brain injuries or other paralyzing neuromuscular conditions."

We have initially looked at ICD-9 codes since those codes would seem to apply for cost reporting periods beginning during FY 2015. However, since the ICD-10 codes were implemented for services furnished beginning with October 1, 2015, it is possible that ICD-10 codes might also have to be looked at (or the base period moved to a year earlier to avoid this issue). Do you know when the cost reporting period begins for the targeted facilities?

We have not run these ICD-9 codes by the program experts yet, but wanted to get something to you today. The codes are listed below, and it is possible that other codes could also apply. It would be a rulemaking issue for the Secretary to identify the specific diagnosis codes that would fit under these conditions.

We are not confident that the current language would include only the intended hospitals and that the intended hospitals would be able to meet the requirements.

Catastrophic spinal cord:

806 Fracture of vertebral column with spinal cord injury

- 806.0 Closed fracture of cervical vertebra with spinal cord injury
 - 806.00 Closed fracture of C1-C4 level with unspecified spinal cord injury
 - 806.01 Closed fracture of C1-C4 level with complete lesion of cord
 - 806.02 Closed fracture of C1-C4 level with anterior cord syndrome
 - 806.03 Closed fracture of C1-C4 level with central cord syndrome
 - 806.04 Closed fracture of C1-C4 level with other specified spinal cord injury
 - 806.05 Closed fracture of C5-C7 level with unspecified spinal cord injury
 - 806.06 Closed fracture of C5-C7 level with complete lesion of cord
 - 806.07 Closed fracture of C5-C7 level with anterior cord syndrome
 - 806.08 Closed fracture of C5-C7 level with central cord syndrome
 - 806.09 Closed fracture of C5-C7 level with other specified spinal cord injury
- 806.1 Open fracture of cervical vertebra with spinal cord injury
 - 806.10 Open fracture of C1-C4 level with unspecified spinal cord injury
 - 806.11 Open fracture of C1-C4 level with complete lesion of cord
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 - 806.13 Open fracture of C1-C4 level with central cord syndrome
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 - 806.15 Open fracture of C5-C7 level with unspecified spinal cord injury
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 - 806.18 Open fracture of C5-C7 level with central cord syndrome
 - 806.19 Open fracture of C5-C7 level with other specified spinal cord injury
- 806.2 Closed fracture of dorsal vertebra with spinal cord injury
 - 806.20 Closed fracture of T1-T6 level with unspecified spinal cord injury
 - 806.21 Closed fracture of T1-T6 level with complete lesion of cord
 - 806.22 Closed fracture of T1-T6 level with anterior cord syndrome
 - 806.23 Closed fracture of T1-T6 level with central cord syndrome
 - 806.24 Closed fracture of T1-T6 level with other specified spinal cord injury
 - 806.25 Closed fracture of T7-T12 level with unspecified spinal cord injury
 - 806.26 Closed fracture of T7-T12 level with complete lesion of cord
 - 806.27 Closed fracture of T7-T12 level with anterior cord syndrome
 - 806.28 Closed fracture of T7-T12 level with central cord syndrome
 - 806.29 Closed fracture of T7-T12 level with other specified spinal cord injury
- 806.3 Open fracture of dorsal vertebra with spinal cord injury
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 - 806.32 Open fracture of T1-T6 level with anterior cord syndrome
 - 806.33 Open fracture of T1-T6 level with central cord syndrome
 - 806.34 Open fracture of T1-T6 level with other specified spinal cord injury
 - 806.35 Open fracture of T7-T12 level with unspecified spinal cord injury
 - 806.36 Open fracture of T7-T12 level with complete lesion of cord
 - 806.37 Open fracture of T7-T12 level with anterior cord syndrome

- 806.38 Open fracture of T7-T12 level with central cord syndrome
- 806.39 Open fracture of T7-T12 level with other specified spinal cord injury
- 806.4 Closed fracture of lumbar spine with spinal cord injury
- 806.5 Open fracture of lumbar spine with spinal cord injury
- 806.6 Closed fracture of sacrum and coccyx with spinal cord injury
 - 806.60 Closed fracture of sacrum and coccyx with unspecified spinal cord injury
 - 806.61 Closed fracture of sacrum and coccyx with complete cauda equina lesion
 - 806.62 Closed fracture of sacrum and coccyx with other cauda equina injury
 - 806.69 Closed fracture of sacrum and coccyx with other spinal cord injury
- 806.7 Open fracture of sacrum and coccyx with spinal cord injury
 - 806.70 Open fracture of sacrum and coccyx with unspecified spinal cord injury
 - 806.71 Open fracture of sacrum and coccyx with complete cauda equina lesion
 - 806.72 Open fracture of sacrum and coccyx with other cauda equina injury
 - 806.79 Open fracture of sacrum and coccyx with other spinal cord injury
- 806.8 Closed fracture of unspecified vertebral column with spinal cord injury
- 806.9 Open fracture of unspecified vertebral column with spinal cord injury

952 Spinal cord injury without evidence of spinal bone injury

- 952.0 Cervical spinal cord injury without evidence of spinal bone injury
- 952.1 Dorsal (thoracic) spinal cord injury without evidence of spinal bone injury
- 952.2 Lumbar spinal cord injury without evidence of spinal bone injury
- 952.3 Sacral spinal cord injury without evidence of spinal bone injury convert
- 952.4 Cauda equina spinal cord injury without evidence of spinal bone injury
- 952.8 Multiple sites of spinal cord injury without evidence of spinal bone injury
- 952.9 Unspecified site of spinal cord injury without evidence of spinal bone injury

Acquired brain injuries:

854 Intracranial injury of other and unspecified nature

- 854.0 Intracranial injury of other and unspecified nature without mention of open intracranial wound
 - 854.00 Intracranial injury of other and unspecified nature without mention of open intracranial wound, unspecified state of consciousness
 - 854.01 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with no loss of consciousness
 - 854.02 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with brief [less than one hour] loss of consciousness
 - 854.03 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with moderate [1-24 hours] loss of consciousness
 - 854.04 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with prolonged [more than 24 hours] loss of consciousness and return to pre-existing conscious level
 - 854.05 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with prolonged [more than 24 hours] loss of consciousness without return to pre-existing conscious level

- 854.06 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with loss of consciousness of unspecified duration
- 854.09 Intracranial injury of other and unspecified nature without mention of open intracranial wound, with concussion, unspecified
- 854.1 Intracranial injury of other and unspecified nature with open intracranial wound
 - 854.10 Intracranial injury of other and unspecified nature with open intracranial wound, unspecified state of consciousness
 - 854.11 Intracranial injury of other and unspecified nature with open intracranial wound, with no loss of consciousness
 - 854.12 Intracranial injury of other and unspecified nature with open intracranial wound, with brief [less than one hour] loss of consciousness
 - 854.13 Intracranial injury of other and unspecified nature with open intracranial wound, with moderate [1-24 hours] loss of consciousness
 - 854.14 Intracranial injury of other and unspecified nature with open intracranial wound, with prolonged [more than 24 hours] loss of consciousness and return to pre-existing conscious level
 - 854.15 Intracranial injury of other and unspecified nature with open intracranial wound, with prolonged [more than 24 hours] loss of consciousness without return to pre-existing conscious level
 - 854.16 Intracranial injury of other and unspecified nature with open intracranial wound, with loss of consciousness of unspecified duration
 - 854.19 Intracranial injury of other and unspecified nature with open intracranial wound, with concussion, unspecified

348 Other conditions of brain

- 348.0 Cerebral cysts
- 348.1 Anoxic brain damage
- 348.2 Benign intracranial hypertension
- 348.3 Encephalopathy, not elsewhere classified
 - 348.30 Encephalopathy, unspecified
 - 348.31 Metabolic encephalopathy
 - 348.39 Other encephalopathy
- 348.4 Compression of brain
- 348.5 Cerebral edema
- 348.8 Other conditions of brain
 - 348.81 Temporal sclerosis
 - 348.82 Brain death
 - 348.89 Other conditions of brain
- 348.9 Unspecified condition of brain

349 Other and unspecified disorders of the nervous system

- 349.0 Reaction to spinal or lumbar puncture
- 349.1 Nervous system complications from surgically implanted device
- 349.2 Disorders of meninges, not elsewhere classified
- 349.3 Dural tear

- 349.31 Accidental puncture or laceration of dura during a procedure
- 349.39 Other dural tear
- 349.8 Other specified disorders of nervous system
 - 349.81 Cerebrospinal fluid rhinorrhea
 - 349.82 Toxic encephalopathy
 - 349.89 Other specified disorders of nervous system
- 349.9 Unspecified disorders of nervous system

Other paralyzing neuromuscular conditions:

-

330 Cerebral degenerations usually manifest in childhood

- 330.0 Leukodystrophy
- 330.1 Cerebral lipidoses
- 330.2 Cerebral degeneration in generalized lipidoses
- 330.3 Cerebral degeneration of childhood in other diseases classified elsewhere
- 330.8 Other specified cerebral degenerations in childhood
- 330.9 Unspecified cerebral degeneration in childhood

-

332 Parkinson's disease

- 332.0 Paralysis agitans
- 332.1 Secondary parkinsonism

336 Other diseases of spinal cord

- 336.0 Syringomyelia and syringobulbia
- 336.1 Vascular myelopathies
- 336.2 Subacute combined degeneration of spinal cord in diseases classified elsewhere
- 336.3 Myelopathy in other diseases classified elsewhere
- 336.8 Other myelopathy
- 336.9 Unspecified disease of spinal cord

340 Multiple sclerosis

341 Other demyelinating diseases of central nervous system

- 341.0 Neuromyelitis optica
- 341.1 Schilder's disease
- 341.2 Acute (transverse) myelitis
 - 341.20 Acute (transverse) myelitis NOS
 - 341.21 Acute (transverse) myelitis in conditions classified elsewhere
 - 341.22 Idiopathic transverse myelitis
- 341.8 Other demyelinating diseases of central nervous system
- 341.9 Demyelinating disease of central nervous system, unspecified

344 Other paralytic syndromes

- 344.0 Quadriplegia and quadraparesis
 - 344.00 Quadriplegia, unspecified

- 344.01 Quadriplegia, C1-C4, complete
- 344.02 Quadriplegia, C1-C4, incomplete
- 344.03 Quadriplegia, C5-C7, complete
- 344.04 Quadriplegia, C5-C7, incomplete
- 344.09 Other quadriplegia
- 344.1 Paraplegia
- 344.2 Diplegia of upper limbs
- 344.3 Monoplegia of lower limb
 - 344.30 Monoplegia of lower limb affecting unspecified side
 - 344.31 Monoplegia of lower limb affecting dominant side
 - 344.32 Monoplegia of lower limb affecting nondominant side
- 344.4 Monoplegia of upper limb
 - 344.40 Monoplegia of upper limb affecting unspecified side
 - 344.41 Monoplegia of upper limb affecting dominant side
 - 344.42 Monoplegia of upper limb affecting nondominant side
- 344.5 Unspecified monoplegia
- 344.6 Cauda equina syndrome
 - 344.60 Cauda equina syndrome without mention of neurogenic bladder
 - 344.61 Cauda equina syndrome with neurogenic bladder
- 344.8 Other specified paralytic syndromes
 - 344.81 Locked-in state
 - 344.89 Other specified paralytic syndrome
- 344.9 Paralysis, unspecified

From: DiBlasio, Carla
To: [OToole, Meghan \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#)
Cc: ["jordan_bartolomeo@isakson.senate.gov"](mailto:jordan_bartolomeo@isakson.senate.gov); [Street, Amanda](#); [Graff, Caleb](#); [Druckman, Jennifer \(CMS/OL\)](#); [Dorney, Thomas](#)
Subject: RE: Follow-up to Yesterday's Conversation
Date: Wednesday, June 29, 2016 1:37:31 PM
Attachments: [PRICEG_060_xml.pdf](#)

We've made our best attempt to account for all of your comments and concerns in the attached updated draft. This is hot of the press from leg counsel. We would love to discuss this updated draft at 2 pm if that's possible.

Thanks so much!

From: DiBlasio, Carla
Sent: Wednesday, June 29, 2016 12:21 PM
To: 'OToole, Meghan (CMS/OL)'; Burney, Ira (CMS/OL)
Cc: jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb; Druckman, Jennifer (CMS/OL); Dorney, Thomas
Subject: RE: Follow-up to Yesterday's Conversation

Great thanks!

I am looping in Tom Dorney from Rep. John Lewis's office in hopes that he can also join the call at 2 pm. We've had the privilege of also working with Mr. Lewis's staff on this.

From: OToole, Meghan (CMS/OL) [<mailto: Meghan.OToole@cms.hhs.gov>]
Sent: Wednesday, June 29, 2016 12:16 PM
To: DiBlasio, Carla; Burney, Ira (CMS/OL)
Cc: jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb; Druckman, Jennifer (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

We can use this call-in number at 2 pm.

(b)(6)

Meeting Number: (b)(6)

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Wednesday, June 29, 2016 11:13 AM
To: Burney, Ira (CMS/OL) <ira.burney@cms.hhs.gov>
Cc: jordan_bartolomeo@isakson.senate.gov; Street, Amanda <Amanda.Street@mail.house.gov>; Graff, Caleb <Caleb.Graff@mail.house.gov>; Druckman, Jennifer (CMS/OL) <Jennifer.Druckman@cms.hhs.gov>; OToole, Meghan (CMS/OL) <[Meghan.OToole@cms.hhs.gov](mailto: Meghan.OToole@cms.hhs.gov)>
Subject: RE: Follow-up to Yesterday's Conversation

Thanks so much, Ira!

Let's do 2:00 pm.

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Wednesday, June 29, 2016 11:02 AM
To: DiBlasio, Carla
Cc: jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb; Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: Re: Follow-up to Yesterday's Conversation

Sorry, meant to respond last night but juggling schedule. How about a call at 2 or 3 pm today?

On Jun 29, 2016, at 10:50 AM, DiBlasio, Carla <Carla.Diblasio@mail.house.gov> wrote:

Sorry to be a pest. Any chance we can do a quick call on this?

We are really under the gun to hit a tough deadline, so we *greatly* appreciate all of your help!

Thanks so much!

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 10:00 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Thanks again, Ira.

I took a look at your helpful notes. I have a couple questions, and I'm sure my colleagues may have questions, as well.

Do you have time for a follow-up call tomorrow?

Thanks so much!

Carla

From: Burney, Ira (CMS/OL) [<mailto:ira.burney@cms.hhs.gov>]
Sent: Tuesday, June 28, 2016 6:40 PM
To: DiBlasio, Carla; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

We've thought about your questions about language and the diagnosis codes you sent. Attached are some thoughts. Please let us know if you would like to discuss.

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Tuesday, June 28, 2016 4:36 PM
To: Burney, Ira (CMS/OL); 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb

Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Hey all,

My apologies for multiple emails today. However, I just got off the phone with the W&M Committee and learned that we need to finalize this language by COB *this Thursday*, in order to introduce it during the pro forma session this Friday at 9:00 am, in time for the W&M markup early next week. Our sincere apologies for this challenging timeline - we were taken by surprise ourselves. We also still need to circle back with CBO before introduction on Friday.

Any feedback you can provide at your earliest convenience would be greatly appreciated.

Thanks so much!!
Carla

From: DiBlasio, Carla
Sent: Tuesday, June 28, 2016 12:47 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: 'Druckman, Jennifer (CMS/OL)'; 'OToole, Meghan (CMS/OL)'
Subject: RE: Follow-up to Yesterday's Conversation

Good afternoon,

I've attached the complete list of codes that the relevant facilities commonly use, intended for inclusion in the language. This is a lengthy list. What are your thoughts on this list of codes? And how do you recommend we incorporate this lengthy list into our language?

Many thanks for your helpful feedback.

From: DiBlasio, Carla
Sent: Friday, June 24, 2016 7:20 PM
To: 'Burney, Ira (CMS/OL)'; 'jordan_bartolomeo@isakson.senate.gov'; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Follow-up to Yesterday's Conversation

Thanks so much, Ira!

Wow, this is a lot of codes. Thanks for taking the time to do this. The cost reporting for one facility starts in October and another starts in April.

You mentioned that you're not confident that the current language would include

only the intended hospitals and that the intended hospitals would be able to meet the requirements. We would like to do everything we can to tighten up the language so it captures these facilities, and we welcome any additional recommendations you may have.

Have a wonderful weekend!

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Policy Advisor/Legislative Counsel
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Sent: Friday, June 24, 2016 5:25 PM
To: DiBlasio, Carla; jordan_bartolomeo@isakson.senate.gov; Street, Amanda; Graff, Caleb
Cc: Druckman, Jennifer (CMS/OL); OToole, Meghan (CMS/OL)
Subject: Follow-up to Yesterday's Conversation

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- 806.05 Closed fracture of C5-C7 level with unspecified spinal cord injury
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Acquired brain injuries:

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349.2 Disorders of meninges, not elsewhere classified
349.3 Dural tear
 349.31 Accidental puncture or laceration of dura during a procedure
 349.39 Other dural tear
349.8 Other specified disorders of nervous system
 349.81 Cerebrospinal fluid rhinorrhea
 349.82 Toxic encephalopathy
 349.89 Other specified disorders of nervous system
349.9 Unspecified disorders of nervous system

Other paralyzing neuromuscular conditions:

330 Cerebral degenerations usually manifest in childhood

- 330.0 Leukodystrophy
- 330.1 Cerebral lipidoses
- 330.2 Cerebral degeneration in generalized lipidoses
- 330.3 Cerebral degeneration of childhood in other diseases classified elsewhere
- 330.8 Other specified cerebral degenerations in childhood
- 330.9 Unspecified cerebral degeneration in childhood

332 Parkinson's disease

- 332.0 Paralysis agitans
- 332.1 Secondary parkinsonism

336 Other diseases of spinal cord

- 336.0 Syringomyelia and syringobulbia
- 336.1 Vascular myelopathies
- 336.2 Subacute combined degeneration of spinal cord in diseases classified elsewhere
- 336.3 Myelopathy in other diseases classified elsewhere
- 336.8 Other myelopathy
- 336.9 Unspecified disease of spinal cord

340 Multiple sclerosis

341 Other demyelinating diseases of central nervous system

- 341.0 Neuromyelitis optica
- 341.1 Schilder's disease
- 341.2 Acute (transverse) myelitis
 - 341.20 Acute (transverse) myelitis NOS
 - 341.21 Acute (transverse) myelitis in conditions classified elsewhere
 - 341.22 Idiopathic transverse myelitis
- 341.8 Other demyelinating diseases of central nervous system
- 341.9 Demyelinating disease of central nervous system, unspecified

344 Other paralytic syndromes

- 344.0 Quadriplegia and quadraparesis
 - 344.00 Quadriplegia, unspecified
 - 344.01 Quadriplegia, C1-C4, complete
 - 344.02 Quadriplegia, C1-C4, incomplete
 - 344.03 Quadriplegia, C5-C7, complete
 - 344.04 Quadriplegia, C5-C7, incomplete
 - 344.09 Other quadriplegia
- 344.1 Paraplegia
- 344.2 Diplegia of upper limbs
- 344.3 Monoplegia of lower limb

- 344.30 Monoplegia of lower limb affecting unspecified side
- 344.31 Monoplegia of lower limb affecting dominant side
- 344.32 Monoplegia of lower limb affecting nondominant side
- 344.4 Monoplegia of upper limb
 - 344.40 Monoplegia of upper limb affecting unspecified side
 - 344.41 Monoplegia of upper limb affecting dominant side
 - 344.42 Monoplegia of upper limb affecting nondominant side
- 344.5 Unspecified monoplegia
- 344.6 Cauda equina syndrome
 - 344.60 Cauda equina syndrome without mention of neurogenic bladder
 - 344.61 Cauda equina syndrome with neurogenic bladder
- 344.8 Other specified paralytic syndromes
 - 344.81 Locked-in state
 - 344.89 Other specified paralytic syndrome
- 344.9 Paralysis, unspecified

From: Street, Amanda
To: [Baker, Brett \(Finance\); Hoffmann, Matt](#)
Cc: [Druckman, Jennifer \(CMS/OL\); Yen, Lisa \(CMS/OL\); Burney, Ira \(CMS/OL\); DiBlasio, Carla; Janeczko, Susan \(CMS/OL\)](#)
Subject: Re: MPP Demo TA Call
Date: Tuesday, October 20, 2015 3:31:40 PM
Attachments: [DMECBP bill -9.1.15.pdf](#)

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Many thanks!

Amanda

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Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Street, Amanda" on behalf of "Street, Amanda"
Date: Friday, October 16, 2015 at 4:01 PM
To: "Brett-Baker@finance.senate.gov", "Hoffmann, Matt"
Cc: "Jennifer.Druckman@CMS.hhs.gov", "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov", "DiBlasio, Carla", "Susan.Janeczko@cms.hhs.gov"
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On Aug 21, 2015, at 6:24 PM, Baker, Brett <Brett.Baker@mail.house.gov> wrote:

Thanks for sending this along.

From: Druckman, Jennifer (CMS/OL) [<mailto:Jennifer.Druckman@cms.hhs.gov>]
Sent: Friday, August 21, 2015 03:24 PM Eastern Standard Time
To: Baker, Brett; Yen, Lisa (CMS/OL) <Lisa.Yen@cms.hhs.gov>; Burney, Ira (CMS/OL) <ira.burney@cms.hhs.gov>
Cc: Street, Amanda; DiBlasio, Carla; Janeczko, Susan (CMS/OL) <Susan.Janeczko@cms.hhs.gov>
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To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: Druckman, Jennifer (CMS/OL); Street, Amanda; DiBlasio, Carla

Subject: Re: MPP Demo TA Call

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Brett

Brett Baker
Professional Staff
Committee on Ways and Means
Subcommittee on Health
1135 Longworth House Office Building
Phone: (202) 225-3943

From: <Yen>, Lisa Yen <lisa.yen@cms.hhs.gov>
Date: Thursday, July 23, 2015 6:03 PM
To: Brett Baker <brett.baker@mail.house.gov>, Ira Burney <ira.burney@cms.hhs.gov>
Cc: "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@CMS.hhs.gov>, "Street, Amanda" <Amanda.Street@mail.house.gov>, "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>
Subject: RE: MPP Demo TA Call

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(b)(6) and Meeting Number: (b)(6) . We will talk to you then!

From: Baker, Brett [<mailto:Brett.Baker@mail.house.gov>]
Sent: Thursday, July 23, 2015 3:36 PM
To: Burney, Ira (CMS/OL); Yen, Lisa (CMS/OL)
Cc: Druckman, Jennifer (CMS/OL); Street, Amanda; DiBlasio, Carla
Subject: MPP Demo TA Call

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Brett

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Subcommittee on Health
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To: [Baker, Brett \(Finance\); Hoffmann, Matt](#)
Cc: [Druckman, Jennifer \(CMS/OL\); Yen, Lisa \(CMS/OL\); Burney, Ira \(CMS/OL\); DiBlasio, Carla; Janeczko, Susan \(CMS/OL\)](#)
Subject: Re: MPP Demo TA Call
Date: Tuesday, October 20, 2015 3:31:40 PM
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To: "Brett-Baker@finance.senate.gov", "Hoffmann, Matt"
Cc: "Jennifer.Druckman@CMS.hhs.gov", "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov", "DiBlasio, Carla", "Susan.Janeczko@cms.hhs.gov"
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Cc: Street, Amanda; DiBlasio, Carla; Janeczko, Susan (CMS/OL) <Susan.Janeczko@cms.hhs.gov>
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To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: Druckman, Jennifer (CMS/OL); Street, Amanda; DiBlasio, Carla

Subject: Re: MPP Demo TA Call

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Subcommittee on Health
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To: Brett Baker <brett.baker@mail.house.gov>, Ira Burney <ira.burney@cms.hhs.gov>
Cc: "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@CMS.hhs.gov>, "Street, Amanda" <Amanda.Street@mail.house.gov>, "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>
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Phone: (202) 225-3943

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Cc: [Druckman, Jennifer \(CMS/OL\)](#); [Yen, Lisa \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#); [DiBlasio, Carla](#); [Janeczko, Susan \(CMS/OL\)](#)
Subject: Re: MPP Demo TA Call
Date: Friday, October 16, 2015 4:00:17 PM
Attachments: [DMECBP bill -9.1.15.pdf](#)
[DMECBP bill -9.1.15.pdf](#)

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Phone: (202) 225-3943

From: Street, Amanda
To: [Druckman, Jennifer \(CMS/OL\)](#)
Cc: [Yen, Lisa \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#); [DiBlasio, Carla](#); [Janeczko, Susan \(CMS/OL\)](#); [Baker, Brett \(Finance\)](#); [Hoffmann, Matt](#)
Subject: Re: MPP Demo TA Call
Date: Monday, October 26, 2015 9:43:18 AM
Attachments: [DMECBP bill -9.1.15.pdf](#)

Hi Jen,

I hope you had a relaxing weekend. I'm just circling back on this request. Have you had an opportunity to consider it? Please let me know if you need any more information on our end so we can get the additional TA to CBO as soon as possible.

Many thanks!

--

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House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
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From: "Street, Amanda"
Date: Tuesday, October 20, 2015 at 3:31 PM
To: "Baker, Brett (Finance)", "Hoffmann, Matt"
Cc: "Jennifer.Druckman@CMS.hhs.gov", "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov", "DiBlasio, Carla", "Susan.Janeczko@cms.hhs.gov"
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Phone: (202) 225-3943

From: DiBlasio, Carla
To: [Druckman, Jennifer \(CMS/OL\)](#)
Cc: [Street, Amanda](#); [Burney, Ira \(CMS/OL\)](#)
Subject: RE: Question about MU blanket hardship
Date: Wednesday, December 9, 2015 4:09:42 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

That'd be perfect, thanks Jennifer!

Amanda from the Budget Committee will be joining the call, as well.

From: Druckman, Jennifer (CMS/OL) [mailto:Jennifer.Druckman@cms.hhs.gov]
Sent: Wednesday, December 09, 2015 3:29 PM
To: DiBlasio, Carla
Cc: [Street, Amanda](#); [Burney, Ira \(CMS/OL\)](#)
Subject: RE: Question about MU blanket hardship

Hi Carla,

Doing well, keeping busy over here! Are you available for a call at 5:15 today to discuss? Let me know.

Thanks,
Jennifer

From: DiBlasio, Carla [mailto:Carla.Diblasio@mail.house.gov]
Sent: Wednesday, December 9, 2015 1:38 PM
To: Druckman, Jennifer (CMS/OL)
Cc: [Street, Amanda](#)
Subject: Question about MU blanket hardship

Hey Jen,

I hope you're doing well. I wanted to check in with you regarding the MU blanket hardship exception. More specifically, I'm wondering what steps CMS could take (in theory) to provide a blanket hardship exception? It's my understanding that the MU statute, which explicitly states the need to evaluate hardship applications on a case by case basis, would preclude CMS from granting a blanket hardship exception unless Congress takes action. Can you clarify this point with me? We'd love to setup a phone call with you if that's easiest.

Many thanks!
Carla

Carla DiBlasio, Esq.
Policy Advisor

Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: DiBlasio, Carla
To: [Druckman, Jennifer \(CMS/OL\)](#)
Cc: [Street, Amanda](#); [Graff, Caleb](#); [Burney, Ira \(CMS/OL\)](#); [OTOole, Meghan \(CMS/OL\)](#); jordan_bartolomeo@isakson.senate.gov
Subject: RE: Request for a call re: LTCH language
Date: Thursday, June 23, 2016 1:03:43 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hey Jen,

Thanks so much for your response. We'd love to chat with you today. I think the only time that works today is 5 pm. I am also looping in Jordan from Sen. Isakson's office. We've been working closely with Sen. Isakson's office on this language, so it will be helpful for Jordan to join.

Many thanks!
Carla

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: Druckman, Jennifer (CMS/OL) [mailto:Jennifer.Druckman@cms.hhs.gov]
Sent: Thursday, June 23, 2016 11:06 AM
To: DiBlasio, Carla
Cc: [Street, Amanda](#); [Graff, Caleb](#); [Burney, Ira \(CMS/OL\)](#); [OTOole, Meghan \(CMS/OL\)](#)
Subject: RE: Request for a call re: LTCH language

Hi Carla,

We've had a chance to take a look. Do you have any availability for a call today, Thursday, June 23 at 1:00, 4:00, or 5:00 pm or tomorrow, Friday, June 24 after 2:00 pm? Let me know.

Thanks,
Jen

From: DiBlasio, Carla [mailto:Carla.Diblasio@mail.house.gov]
Sent: Tuesday, June 21, 2016 10:14 PM
To: Druckman, Jennifer (CMS/OL) <Jennifer.Druckman@cms.hhs.gov>
Cc: [Street, Amanda](mailto:Amanda.Street@mail.house.gov) <Amanda.Street@mail.house.gov>; [Graff, Caleb](mailto:Caleb.Graff@mail.house.gov) <Caleb.Graff@mail.house.gov>
Subject: Request for a call re: LTCH language

Hey Jen,

Apologies for the late night email. I hope this email finds you well! We've been working closely with Sen. Isakson's office on the attached LTCH language. We are coming across a couple issues as we're working with CBO to get the language scored. We'd greatly appreciate the opportunity to speak with you about the attached TA and updated bill text this week. Unfortunately, we are facing a tighter timeline than we'd prefer. Do you have a couple minutes to chat this week?

Thanks so much,
Carla

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: DiBlasio, Carla
To: [OToole, Meghan \(CMS/OL\)](#); [Druckman, Jennifer \(CMS/OL\)](#)
Cc: [Street, Amanda](#); [Graff, Caleb](#); [Burney, Ira \(CMS/OL\)](#); jordan_bartolomeo@isakson.senate.gov
Subject: RE: Request for a call re: LTCH language
Date: Thursday, June 23, 2016 1:14:40 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Excellent, thanks!

From: OToole, Meghan (CMS/OL) [<mailto: Meghan.OToole@cms.hhs.gov>]
Sent: Thursday, June 23, 2016 1:14 PM
To: DiBlasio, Carla; Druckman, Jennifer (CMS/OL)
Cc: Street, Amanda; Graff, Caleb; Burney, Ira (CMS/OL); jordan_bartolomeo@isakson.senate.gov
Subject: RE: Request for a call re: LTCH language

Here is a call-in number we can use at 5 pm today.

(b)(6)

Meeting Number: (b)(6)

Thanks,
Meghan

From: DiBlasio, Carla [<mailto: Carla.Diblasio@mail.house.gov>]
Sent: Thursday, June 23, 2016 1:04 PM
To: Druckman, Jennifer (CMS/OL) <[Jennifer.Druckman@cms.hhs.gov](mailto: Jennifer.Druckman@cms.hhs.gov)>
Cc: Street, Amanda <[Amanda.Street@mail.house.gov](mailto: Amanda.Street@mail.house.gov)>; Graff, Caleb <[Caleb.Graff@mail.house.gov](mailto: Caleb.Graff@mail.house.gov)>; Burney, Ira (CMS/OL) <[ira.burney@cms.hhs.gov](mailto: ira.burney@cms.hhs.gov)>; OToole, Meghan (CMS/OL) <[Meghan.OToole@cms.hhs.gov](mailto: Meghan.OToole@cms.hhs.gov)>; jordan_bartolomeo@isakson.senate.gov
Subject: RE: Request for a call re: LTCH language

Hey Jen,

Thanks so much for your response. We'd love to chat with you today. I think the only time that works today is 5 pm. I am also looping in Jordan from Sen. Isakson's office. We've been working closely with Sen. Isakson's office on this language, so it will be helpful for Jordan to join.

Many thanks!
Carla

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: Druckman, Jennifer (CMS/OL) [<mailto:Jennifer.Druckman@cms.hhs.gov>]
Sent: Thursday, June 23, 2016 11:06 AM
To: DiBlasio, Carla
Cc: Street, Amanda; Graff, Caleb; Burney, Ira (CMS/OL); OToole, Meghan (CMS/OL)
Subject: RE: Request for a call re: LTCH language

Hi Carla,

We've had a chance to take a look. Do you have any availability for a call today, Thursday, June 23 at 1:00, 4:00, or 5:00 pm or tomorrow, Friday, June 24 after 2:00 pm? Let me know.

Thanks,
Jen

From: DiBlasio, Carla [<mailto:Carla.Diblasio@mail.house.gov>]
Sent: Tuesday, June 21, 2016 10:14 PM
To: Druckman, Jennifer (CMS/OL) <Jennifer.Druckman@cms.hhs.gov>
Cc: Street, Amanda <Amanda.Street@mail.house.gov>; Graff, Caleb <Caleb.Graff@mail.house.gov>
Subject: Request for a call re: LTCH language

Hey Jen,

Apologies for the late night email. I hope this email finds you well! We've been working closely with Sen. Isakson's office on the attached LTCH language. We are coming across a couple issues as we're working with CBO to get the language scored. We'd greatly appreciate the opportunity to speak with you about the attached TA and updated bill text this week. Unfortunately, we are facing a tighter timeline than we'd prefer. Do you have a couple minutes to chat this week?

Thanks so much,
Carla

Carla DiBlasio
Policy Advisor/Legislative Counsel
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: Street, Amanda
To: [Grossman, Edward](#); [DiBlasio, Carla](#); [Palmer, Ashley](#); [Graff, Caleb](#)
Cc: [Uehlecke, Nicholas](#); [Shapiro, Jessica](#); [Burney, Ira \(CMS/OL\)](#)
Subject: Re: Revised radiation offset (radtherapy_01)
Date: Friday, December 4, 2015 11:10:30 AM

Thank you so much, Ed! I've just sent off to Lori at CBO. She's working to get us an estimate and hopes that it will be available later this afternoon.

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Grossman, Edward"
Date: Friday, December 4, 2015 at 11:01 AM
To: "Street, Amanda", "DiBlasio, Carla", "Palmer, Ashley", "Graff, Caleb"
Cc: "Uehlecke, Nicholas", "Shapiro, Jessica", "Burney, Ira (CMS/OL)"
Subject: RE: Revised radiation offset (radtherapy_01)

Carla, et al:

Someone caught a technical error and designation of new clause should be as clause (iv), not (iii) (page 2, line 1), hence the updated draft attached.

Ed

From: Grossman, Edward
Sent: Wednesday, December 02, 2015 5:48 PM
To: Street, Amanda; DiBlasio, Carla; Palmer, Ashley; Graff, Caleb
Cc: Uehlecke, Nicholas; Shapiro, Jessica; 'Burney, Ira (CMS/OL)'
Subject: RE: Revised radiation offset (radtherapy_01)

New draft attached.

Ed

From: Grossman, Edward
Sent: Wednesday, December 02, 2015 5:40 PM
To: Street, Amanda; DiBlasio, Carla; Palmer, Ashley; Graff, Caleb
Cc: Uehlecke, Nicholas; Shapiro, Jessica; 'Burney, Ira (CMS/OL)'
Subject: RE: Revised radiation offset

SEC. __. TRANSITIONAL PAYMENT RULES FOR CERTAIN RADIATION THERAPY SERVICES UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

(a) In general.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

"(9) Special rule for certain radiation therapy services.—The code definitions, the work relative value units under subsection (c)(2)(C)(i), and the inputs for the practice expense relative value units under subsection (c)(2)(C)(ii) for radiation treatment delivery and related imaging services (identified in 2016 by HCPCS G-codes G6001 through G6015) for the fee schedule established under this subsection for services furnished in 2017 and 2018 shall be the same as such definitions, units, and inputs the fee schedule so established for services furnished in 2016. "; and (2) in subsection (c)(2)(K), by adding at the end the following new clause:

"(iii) Treatment of certain radiation therapy services.—Radiation treatment delivery and related imaging services identified under subsection (b)(9) shall not be considered as potentially misvalued services for purposes of this subparagraph and subparagraph (O) for 2017 and 2018. "

(b) Report to Congress on alternative payment model.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the development of an episodic alternative payment model for payment under the Medicare program under title XVIII of the Social Security Act for radiation therapy services furnished in nonfacility settings.

From: Grossman, Edward
Sent: Wednesday, December 02, 2015 5:37 PM
To: Street, Amanda; DiBlasio, Carla; Palmer, Ashley; Graff, Caleb
Cc: Uehlecke, Nicholas; Shapiro, Jessica; 'Burney, Ira (CMS/OL)'
Subject: RE: Revised radiation offset

Updated:

Sec. __. Transitional payment rules for radiation therapy services under the Medicare physician fee schedule .

(a) **In general** .— Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended— (1) in subsection (b), by adding at the end the following new paragraph:

"(9) **Special rule for radiation therapy services** .— The code definitions and the work relative value units under subsection (c)(2)(C)(i) and the inputs for the practice expense relative value units under subsection (c)(2)(C)(ii) that would otherwise be determined for radiation treatment delivery and related imaging services (identified in 2016 by HCPCS G-codes G6001 through G6015) that are furnished in 2017 and 2018 shall be the same as such definitions, units, and inputs for such services that are furnished in 2016.

"[END-OF-QUOTED-BLOCK]" ; and

(2) in subsection (c)(2)(K), by adding at the end the following new clause:

"(iii) **Treatment of radiation therapy services** .— Radiation treatment delivery and related imaging services identified under subsection (b)(9) shall not be considered as potentially misvalued services for purposes of this subparagraph and subparagraph (O) for 2017 and 2018.

"[END-OF-QUOTED-BLOCK]" .

(b) **Report to Congress on alternative payment model** .— Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the development of an episodic alternative payment model for payment under the Medicare program under title XVIII of the Social Security Act for radiation therapy

services furnished in nonfacility settings.

From: Grossman, Edward
Sent: Wednesday, December 02, 2015 5:27 PM
To: Street, Amanda; DiBlasio, Carla; Palmer, Ashley; Graff, Caleb
Cc: Uehlecke, Nicholas; Shapiro, Jessica; Burney, Ira (CMS/OL)
Subject: RE: Revised radiation offset

Sec. __. Transitional payment rules for radiation therapy services under the Medicare physician fee schedule .

(a) **In general** .— Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended— (1) in subsection (b), by adding at the end the following new paragraph:

“(9) **Special rule for radiation therapy services** .— The code definitions and the work relative value units under subsection (c)(2)(C)(i) and the inputs for the practice expense relative value units under subsection (c)(2)(C)(ii) that would otherwise be determined for radiation treatment delivery and related imaging services (identified in 2016 by HCPCS G-codes G6001 through G6015) that are furnished in 2017 and 2018 shall be the same as such definitions, units, and inputs for such services that are furnished in 2016.

‘[END-OF-QUOTED-BLOCK]’ ; and

(2) in subsection (c)(2)(K), by adding at the end the following new clause:

“(iii) **Treatment of radiation therapy services** .— Radiation treatment delivery and related imaging services identified under subsection (b)(9) shall not be considered as potentially misvalued services for purposes of this subparagraph and subparagraph (O) for 2017 and 2018.

‘[END-OF-QUOTED-BLOCK]’ .

(b) **Report to Congress on alternative payment model** .— Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the development of an episodic alternative payment model for payment under the Medicare program under title XVIII of the Social Security Act for radiation therapy services furnished in nonfacility settings.

From: Street, Amanda
Sent: Wednesday, December 02, 2015 2:59 PM
To: DiBlasio, Carla; Grossman, Edward; Palmer, Ashley; Graff, Caleb
Subject: Re: Revised radiation offset

Cool. I’m going to loop Lori into our conversation too so we’re all on the same page.

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
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Main: 202-226-2720
Direct: 202-226-1994

From: "DiBlasio, Carla"

Date: Wednesday, December 2, 2015 at 2:58 PM

To: "Grossman, Edward", "Street, Amanda", "Palmer, Ashley", "Graff, Caleb"

Subject: RE: Revised radiation offset

No problem. Please only share this with CBO and leg counsel.

Thanks!

From: Grossman, Edward

Sent: Wednesday, December 02, 2015 2:56 PM

To: Street, Amanda; DiBlasio, Carla; Palmer, Ashley; Graff, Caleb

Subject: RE: Revised radiation offset

Can you also share it with me? I'm happy to review the issues with Lori even before (or with) CMS.

From: Street, Amanda

Sent: Wednesday, December 02, 2015 2:53 PM

To: DiBlasio, Carla; Palmer, Ashley; Graff, Caleb

Cc: Grossman, Edward

Subject: Re: Revised radiation offset

I did not. Will do that now.

--

Amanda Street

House Budget Committee

207 Cannon House Office Building

Washington, DC 20515

Main: 202-226-2720

Direct: 202-226-1994

From: "DiBlasio, Carla"

Date: Wednesday, December 2, 2015 at 2:43 PM

To: "Street, Amanda", "Palmer, Ashley", "Graff, Caleb"

Cc: "Grossman, Edward"

Subject: RE: Revised radiation offset

Good idea, I'm looping in Ed now. He can help us to better clarify with CBO what the updated radiation offset language does.

Ed – We need to better explain the updates in the language to CBO. You explain it better than anyone.. so we'd love your help.

Amanda - Did you share McManus's memo with CBO? That memo should be very helpful to them.

From: Street, Amanda

Sent: Wednesday, December 02, 2015 1:52 PM
To: DiBlasio, Carla; Palmer, Ashley; Graff, Caleb
Subject: FW: Revised radiation offset

Hey Carla,

Please see Lori's note below. Could we clarify with Ed exactly what our intent is with this language so I can share that with Lori?

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: Lori Housman
Date: Wednesday, December 2, 2015 at 1:44 PM
To: "Street, Amanda"
Subject: RE: Revised radiation offset

The updated language is a bit confusing and I'm still sorting through how it actually works before I can score this version.

From: DiBlasio, Carla
To: [Druckman, Jennifer \(CMS/OL\)](#)
Cc: [Uehlecke, Nicholas](#); [Street, Amanda](#); [Burney, Ira \(CMS/OL\)](#)
Subject: RE: TA for Radiation Therapy Language
Date: Tuesday, December 1, 2015 6:59:10 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thanks Jen,

4:30 pm tomorrow sounds great. I think Nick may be able to join the call by then, as well.

Thanks again!

Carla DiBlasio, Esq.
Policy Advisor
Congressman Tom Price, M.D. (GA-06)
100 Cannon House Office Building
Washington, DC 20515 | 202.225.4501



From: [Druckman, Jennifer \(CMS/OL\)](#) [mailto:Jennifer.Druckman@cms.hhs.gov]
Sent: Tuesday, December 01, 2015 6:34 PM
To: DiBlasio, Carla
Cc: [Uehlecke, Nicholas](#); [Street, Amanda](#); [Burney, Ira \(CMS/OL\)](#)
Subject: RE: TA for Radiation Therapy Language

Hi Carla,

Happy to discuss this language, how does 4:30 pm on Wednesday work for you? Let me know.

Thanks,
Jen

From: DiBlasio, Carla [mailto:Carla.Diblasio@mail.house.gov]
Sent: Tuesday, December 1, 2015 12:30 PM
To: Druckman, Jennifer (CMS/OL)
Cc: [Uehlecke, Nicholas](#); [Street, Amanda](#)
Subject: TA for Radiation Therapy Language

Hey Jennifer,

I hope you had a nice Thanksgiving! I wanted to touch base with you regarding the attached radiation therapy language. It's my understanding that CMS was in touch with Nick Uehlecke regarding the language. However, Nick had an emergency last night so I wanted to check in with you

to determine if you were able to provide any TA on the language? Happy to chat over the phone if that's easiest.

Many thanks!

Carla

Carla DiBlasio, Esq.

Policy Advisor

Congressman Tom Price, M.D. (GA-06)

100 Cannon House Office Building

Washington, DC 20515 | 202.225.4501



From: Street, Amanda
To: [Yen, Lisa \(CMS/OL\)](mailto:Yen.Lisa@cms.hhs.gov); [Burney, Ira \(CMS/OL\)](mailto:Burney.Ira@cms.hhs.gov)
Cc: [DiBlasio, Carla](mailto:DiBlasio.Carla@mail.house.gov); [Cross, Jesse](mailto:Cross.Jesse@mail.house.gov); [Shapiro, Jessica](mailto:Shapiro.Jessica@mail.house.gov); [Druckman, Jennifer \(CMS/OL\)](mailto:Druckman.Jennifer@cms.hhs.gov)
Subject: Re: TA on bill regarding competitive bidding
Date: Tuesday, December 8, 2015 5:04:51 PM
Attachments: [DME-COMPETITIVE-BIDDING_05.xml\[2\].pdf](#)

Hey Lisa and Ira,

Based on our conversation yesterday, Jesse and Jessica have developed the attached language. We still have a few decisions that need to be made on enteral nutrition and clearing price, but wanted to run this latest version by you to see if it otherwise addresses the concerns you mentioned and/or if you see any other areas of concern.

Thank you so much!

Amanda

--

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207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
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From: "Street, Amanda" <Amanda.Street@mail.house.gov>
Date: Monday, December 7, 2015 at 6:02 PM
To: "Yen, Lisa (CMS/OL)" <Lisa.Yen@cms.hhs.gov>, "Burney, Ira (CMS/OL)" <ira.burney@cms.hhs.gov>
Cc: "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>, "Cross, Jesse" <Jesse.Cross@mail.house.gov>, "Shapiro, Jessica" <Jessica.shapiro@mail.house.gov>, "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@cms.hhs.gov>
Subject: Re: TA on bill regarding competitive bidding

Thank you so much, Lisa. I really appreciate it! I'll be sure to take another look at that.

Thank you all again for your time this afternoon! Have a wonderful evening!

Amanda

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Yen, Lisa (CMS/OL)" <Lisa.Yen@cms.hhs.gov>

Date: Monday, December 7, 2015 at 5:57 PM

To: "Street, Amanda" <Amanda.Street@mail.house.gov>, "Burney, Ira (CMS/OL)" <ira.burney@cms.hhs.gov>

Cc: "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>, "Cross, Jesse" <Jesse.Cross@mail.house.gov>, "Shapiro, Jessica" <Jessica.shapiro@mail.house.gov>, "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@cms.hhs.gov>

Subject: RE: TA on bill regarding competitive bidding

Hi Amanda – Per your request at the end of the call, the reference to enteral nutrients, equipment and supplies is section 1842(s)(3). We competitively bid these items and are applying the adjusted rates in the non-competitive bid areas using the authority in that section.

Let us know if you have any questions.

Thanks!

Lisa

From: Yen, Lisa (CMS/OL)

Sent: Monday, December 7, 2015 4:11 PM

To: 'Street, Amanda'; Burney, Ira (CMS/OL)

Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica; Druckman, Jennifer (CMS/OL)

Subject: RE: TA on bill regarding competitive bidding

Here is the link to the final rule: <http://www.gpo.gov/fdsys/pkg/FR-2014-11-06/pdf/2014-26182.pdf>

Page 66262 is where the regulations 424.10(g) begin.

From: Street, Amanda [<mailto:Amanda.Street@mail.house.gov>]

Sent: Monday, December 7, 2015 11:03 AM

To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)

Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica; Druckman, Jennifer (CMS/OL)

Subject: Re: TA on bill regarding competitive bidding

Hi Lisa,

Sorry for the multiple emails, but 3:30pm actually works better if that works for you all too. Thank you again!

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720

Direct: 202-226-1994

From: "Street, Amanda" <Amanda.Street@mail.house.gov>
Date: Monday, December 7, 2015 at 11:00 AM
To: "Yen, Lisa (CMS/OL)" <Lisa.Yen@cms.hhs.gov>, "Burney, Ira (CMS/OL)" <ira.burney@cms.hhs.gov>
Cc: "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>, "Cross, Jesse" <Jesse.Cross@mail.house.gov>, "Shapiro, Jessica" <Jessica.shapiro@mail.house.gov>, "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@cms.hhs.gov>
Subject: Re: TA on bill regarding competitive bidding

Hi Lisa,

My apologies for the delay in getting back to you, and thank you so much for your flexibility on time. Are you all still available for a call today at 3pm?

Thank you so much!

Amanda

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Yen, Lisa (CMS/OL)" <Lisa.Yen@cms.hhs.gov>
Date: Friday, December 4, 2015 at 6:21 PM
To: "Street, Amanda" <Amanda.Street@mail.house.gov>, "Burney, Ira (CMS/OL)" <ira.burney@cms.hhs.gov>
Cc: "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>, "Cross, Jesse" <Jesse.Cross@mail.house.gov>, "Shapiro, Jessica" <Jessica.shapiro@mail.house.gov>, "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@cms.hhs.gov>
Subject: Re: TA on bill regarding competitive bidding

Hi Amanda - we're available on Monday 12/ 7 between 11 am and 4 pm. Let us know a time that works for you then.

Thanks and have a good weekend!

Lisa

From: Street, Amanda [<mailto:Amanda.Street@mail.house.gov>]

Sent: Friday, December 04, 2015 04:43 PM
To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla <Carla.Diblasio@mail.house.gov>; Cross, Jesse <Jesse.Cross@mail.house.gov>; Shapiro, Jessica <Jessica.shapiro@mail.house.gov>; Druckman, Jennifer (CMS/OL)
Subject: Re: TA on bill regarding competitive bidding

Hi Lisa,

My apologies for the delayed response, but thank you so much for the TA on the first section of the bill. This is incredibly helpful and many of the points you raised are consistent with feedback I'd received from CBO and others. Would you all have time for a conversation next week?

Many thanks!

Amanda

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Yen, Lisa (CMS/OL)"
Date: Thursday, December 3, 2015 at 6:32 PM
To: "Street, Amanda", "Burney, Ira (CMS/OL)"
Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica", "Druckman, Jennifer (CMS/OL)"
Subject: RE: TA on bill regarding competitive bidding

Hi Amanda – Attached are our technical comments on section 1 of this bill. Let us know if it would be helpful to have a call to walk through these comments. We are available for a call tomorrow if you let us know some times that work for you.

These technical comments are in response to your request and do not reflect the Administration's position on this language.

Thanks!

Lisa

From: Street, Amanda [<mailto:Amanda.Street@mail.house.gov>]
Sent: Wednesday, November 18, 2015 2:52 PM
To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica
Subject: Re: TA on bill regarding competitive bidding

My apologies for the multiple emails, but I did want to be sure we shared the full language of the bill. You all have reviewed Section 2 of the bill, which includes the market pricing program demonstration.

Many thanks,

Amanda

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Street, Amanda"

Date: Wednesday, November 18, 2015 at 2:43 PM

To: "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov"

Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica"

Subject: TA on bill regarding competitive bidding

Hi Ira and Lisa,

We are working with our leg counsel on a new rate for non-CBAs set to begin in 2016. They've asked us to reach out given many of the items we are working to reform are in regulation rather than statute and would appreciate some additional guidance as to how the current language would be interpreted. Would you mind taking a look?

We are particularly interested in the section (b) that establishes a bid ceiling for contracts beginning on or after Jan 1, 2017 and our language that includes a reference to section 1834 (a)(1)(F). The particular area in question is highlighted below.

I've also copied our counsels, Jesse and Jessica, to correct me in case I've missed anything.

Thank you so much!

Amanda

SECTION 1. REVISION OF PAYMENTS FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.

(a) TRANSITION TO IMPLEMENTATION OF FEE SCHEDULE PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended by adding at the end the following new subparagraph:

“(J) TRANSITION TO IMPLEMENTATION OF PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—

“(i) IN GENERAL.—In implementing subparagraph (F) and paragraphs (1) and (2) of section 414.210(g) of title 42, Code of Federal Regulations, with respect to items and services furnished on or after January 1, 2016, and before January 1, 2018, the fee schedule amount that would otherwise be determined for each area under this section shall be adjusted to the lesser of—

“(I) the applicable percent of the regional price determined under clause (i) of such paragraph (1) for the State in which such area is located (or, in the case of an area located within the District of Columbia, for such District); and

“(II) the fee schedule amount that would otherwise be determined for such area under this section on January 1, 2015, updated by the covered item update described in paragraph (14)(L) for the year in which the items and services to which such fee schedule applies are furnished.

“(ii) APPLICABLE PERCENT.—For purposes of clause (i)(I), the term ‘applicable percent’ means—

“(I) for an area defined as a rural area for purposes of such section 414.210(g) or an area in a frontier State (as defined in section 1886(d)(3)(E)(iii)(II)), 130 percent; and

“(II) for any other area, 120 percent.

“(iii) PHASE-IN.—The adjustment described in clause (i) shall be implemented over a two-year period and in a manner that phases in such adjustment in equal increments in each year of such two-year period, with such adjustment being fully implemented with respect to items and services furnished in 2017.”.

b) BID CEILING FOR COMPETITIVE ACQUISITION FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.—Section 1847(b)(5) of the Social Security Act (42 U.S.C. 1395w-3(b)(5)) is amended—

(1) in subparagraph (A)— (A) by inserting “, subject to subparagraph (E),” after “subsection (a)(2)”; and (B) by inserting “, subject to subparagraph (E),” after “Based on such bids”; and

(2) by adding at the end the following new sub-paragraph:

“(E) BID CEILING FOR DURABLE MEDICAL EQUIPMENT.—In the case of covered items (as defined in section 1834(a)(13)) for which payment would otherwise be made under section 1834(a) that are furnished with respect to competitive bid contracts that begin on or after January 1, 2017, payment under this section for such items may not exceed

the amount that would otherwise be paid for such items under section 1834 (without the application of subsection (a)(1)(F) of such section) if such items and services were furnished on January 1, 2015, updated by the covered item update described in section 1834(a)(14)(L) for the year in which such covered item is furnished.”.

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Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: Street, Amanda
To: [Yen, Lisa \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#)
Cc: [DiBlasio, Carla](#); [Cross, Jesse](#); [Shapiro, Jessica](#); [Druckman, Jennifer \(CMS/OL\)](#)
Subject: Re: TA on bill regarding competitive bidding
Date: Monday, December 7, 2015 6:03:12 PM

Thank you so much, Lisa. I really appreciate it! I'll be sure to take another look at that.

Thank you all again for your time this afternoon! Have a wonderful evening!

Amanda

--

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House Budget Committee
207 Cannon House Office Building
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Main: 202-226-2720
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From: "Yen, Lisa (CMS/OL)" <Lisa.Yen@cms.hhs.gov>
Date: Monday, December 7, 2015 at 5:57 PM
To: "Street, Amanda" <Amanda.Street@mail.house.gov>, "Burney, Ira (CMS/OL)" <ira.burney@cms.hhs.gov>
Cc: "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>, "Cross, Jesse" <Jesse.Cross@mail.house.gov>, "Shapiro, Jessica" <Jessica.shapiro@mail.house.gov>, "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@cms.hhs.gov>
Subject: RE: TA on bill regarding competitive bidding

Hi Amanda – Per your request at the end of the call, the reference to enteral nutrients, equipment and supplies is section 1842(s)(3). We competitively bid these items and are applying the adjusted rates in the non-competitive bid areas using the authority in that section.

Let us know if you have any questions.

Thanks!
Lisa

From: Yen, Lisa (CMS/OL)
Sent: Monday, December 7, 2015 4:11 PM
To: 'Street, Amanda'; Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica; Druckman, Jennifer (CMS/OL)
Subject: RE: TA on bill regarding competitive bidding

Here is the link to the final rule: <http://www.gpo.gov/fdsys/pkg/FR-2014-11-06/pdf/2014-26182.pdf>

Page 66262 is where the regulations 424.10(g) begin.

From: Street, Amanda [<mailto:Amanda.Street@mail.house.gov>]
Sent: Monday, December 7, 2015 11:03 AM
To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica; Druckman, Jennifer (CMS/OL)
Subject: Re: TA on bill regarding competitive bidding

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Date: Friday, December 4, 2015 at 6:21 PM

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Cc: "DiBlasio, Carla" <Carla.Diblasio@mail.house.gov>, "Cross, Jesse" <Jesse.Cross@mail.house.gov>, "Shapiro, Jessica" <Jessica.shapiro@mail.house.gov>, "Druckman, Jennifer (CMS/OL)" <Jennifer.Druckman@cms.hhs.gov>

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Sent: Friday, December 04, 2015 04:43 PM

To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)

Cc: DiBlasio, Carla <Carla.Diblasio@mail.house.gov>; Cross, Jesse <Jesse.Cross@mail.house.gov>; Shapiro, Jessica <Jessica.shapiro@mail.house.gov>; Druckman, Jennifer (CMS/OL)

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From: "Yen, Lisa (CMS/OL)"

Date: Thursday, December 3, 2015 at 6:32 PM

To: "Street, Amanda", "Burney, Ira (CMS/OL)"

Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica", "Druckman, Jennifer (CMS/OL)"

Subject: RE: TA on bill regarding competitive bidding

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Sent: Wednesday, November 18, 2015 2:52 PM
To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica
Subject: Re: TA on bill regarding competitive bidding

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Amanda

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From: "Street, Amanda"
Date: Wednesday, November 18, 2015 at 2:43 PM
To: "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov"
Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica"
Subject: TA on bill regarding competitive bidding

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I've also copied our counsels, Jesse and Jessica, to correct me in case I've missed anything.

Thank you so much!

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(a) TRANSITION TO IMPLEMENTATION OF FEE SCHEDULE PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended by adding at the end the following new subparagraph:

“(J) TRANSITION TO IMPLEMENTATION OF PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—

“(i) IN GENERAL.—In implementing subparagraph (F) and paragraphs (1) and (2) of section 414.210(g) of title 42, Code of Federal Regulations, with respect to items and services furnished on or after January 1, 2016, and before January 1, 2018, the fee schedule amount that would otherwise be determined for each area under this section shall be adjusted to the lesser of—

“(I) the applicable percent of the regional price determined under clause (i) of such paragraph (1) for the State in which such area is located (or, in the case of an area located within the District of Columbia, for such District); and

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Subject: Re: TA on bill regarding competitive bidding
Date: Monday, December 7, 2015 11:03:34 AM

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Cc: [DiBlasio, Carla](#); [Cross, Jesse](#); [Shapiro, Jessica](#); [Druckman, Jennifer \(CMS/OL\)](#)
Subject: Re: TA on bill regarding competitive bidding
Date: Monday, December 7, 2015 11:00:56 AM

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Subject: Re: TA on bill regarding competitive bidding
Date: Friday, December 4, 2015 4:43:36 PM

Hi Lisa,

My apologies for the delayed response, but thank you so much for the TA on the first section of the bill. This is incredibly helpful and many of the points you raised are consistent with feedback I'd received from CBO and others. Would you all have time for a conversation next week?

Many thanks!

Amanda

--

Amanda Street
House Budget Committee
207 Cannon House Office Building
Washington, DC 20515
Main: 202-226-2720
Direct: 202-226-1994

From: "Yen, Lisa (CMS/OL)"
Date: Thursday, December 3, 2015 at 6:32 PM
To: "Street, Amanda", "Burney, Ira (CMS/OL)"
Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica", "Druckman, Jennifer (CMS/OL)"
Subject: RE: TA on bill regarding competitive bidding

Hi Amanda – Attached are our technical comments on section 1 of this bill. Let us know if it would be helpful to have a call to walk through these comments. We are available for a call tomorrow if you let us know some times that work for you.

These technical comments are in response to your request and do not reflect the Administration's position on this language.

Thanks!

Lisa

From: Street, Amanda [<mailto:Amanda.Street@mail.house.gov>]
Sent: Wednesday, November 18, 2015 2:52 PM
To: Yen, Lisa (CMS/OL); Burney, Ira (CMS/OL)
Cc: DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica
Subject: Re: TA on bill regarding competitive bidding

My apologies for the multiple emails, but I did want to be sure we shared the full language of the bill. You all have reviewed Section 2 of the bill, which includes the market pricing program demonstration.

Many thanks,

Amanda

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Direct: 202-226-1994

From: "Street, Amanda"

Date: Wednesday, November 18, 2015 at 2:43 PM

To: "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov"

Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica"

Subject: TA on bill regarding competitive bidding

Hi Ira and Lisa,

We are working with our leg counsel on a new rate for non-CBAs set to begin in 2016. They've asked us to reach out given many of the items we are working to reform are in regulation rather than statute and would appreciate some additional guidance as to how the current language would be interpreted. Would you mind taking a look?

We are particularly interested in the section (b) that establishes a bid ceiling for contracts beginning on or after Jan 1, 2017 and our language that includes a reference to section 1834 (a)(1)(F). The particular area in question is highlighted below.

I've also copied our counsels, Jesse and Jessica, to correct me in case I've missed anything.

Thank you so much!

Amanda

SECTION 1. REVISION OF PAYMENTS FOR DURABLE MEDICAL EQUIPMENT UNDER THE MEDICARE PROGRAM.

(a) TRANSITION TO IMPLEMENTATION OF FEE SCHEDULE PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended by adding at the end the following new subparagraph:

“(J) TRANSITION TO IMPLEMENTATION OF PAYMENT ADJUSTMENTS USING INFORMATION FROM COMPETITIVE BIDDING PROGRAMS.—

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“(I) the applicable percent of the regional price determined under clause (i) of such paragraph (1) for the State in which such area is located (or, in the case of an area located within the District of Columbia, for such District); and

“(II) the fee schedule amount that would otherwise be determined for such area under this section on January 1, 2015, updated by the covered item update described in paragraph (14)(L) for the year in which the items and services to which such fee schedule applies are furnished.

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“(iii) PHASE-IN.—The adjustment described in clause (i) shall be implemented over a two-year period and in a manner that phases in such adjustment in equal increments in each year of such two-year period, with such adjustment being fully implemented with respect to items and services furnished in 2017.”.

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(1) in subparagraph (A)— (A) by inserting “, subject to subparagraph (E),” after “subsection (a)(2)”; and (B) by inserting “, subject to subparagraph (E),” after “Based on such bids”; and

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“(E) BID CEILING FOR DURABLE MEDICAL EQUIPMENT.—In the case of covered items (as defined in section 1834(a)(13)) for which payment would otherwise be made under section 1834(a) that are furnished with respect to competitive bid contracts that begin on or after January 1, 2017, payment under this section for such items may not exceed

the amount that would otherwise be paid for such items under section 1834 (without the application of subsection (a)(1)(F) of such section) if such items and services were furnished on January 1, 2015, updated by the covered item update described in section 1834(a)(14)(L) for the year in which such covered item is furnished.”.

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From: Street, Amanda
To: [Yen, Lisa \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#)
Cc: [DiBlasio, Carla](#); [Cross, Jesse](#); [Shapiro, Jessica](#)
Subject: Re: TA on bill regarding competitive bidding
Date: Wednesday, November 18, 2015 2:52:17 PM
Attachments: [DME-competitive-bidding_02_xmlf21.pdf](#)

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Many thanks,
Amanda

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From: "Street, Amanda"
Date: Wednesday, November 18, 2015 at 2:43 PM
To: "lisa.yen@cms.hhs.gov", "ira.burney@cms.hhs.gov"
Cc: "DiBlasio, Carla", "Cross, Jesse", "Shapiro, Jessica"
Subject: TA on bill regarding competitive bidding

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Thank you so much!
Amanda

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--

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From: [Burney, Ira \(CMS/OL\)](#)
To: ["Street, Amanda"](#)
Cc: [DiBlasio, Carla](#); [Cross, Jesse](#); [Shapiro, Jessica](#); [Druckman, Jennifer \(CMS/OL\)](#); [D'Aquila, Dennis \(Thune\)](#); [Baker, Brett \(Finance\)](#); [Yen, Lisa \(CMS/OL\)](#)
Subject: RE: TA on bill regarding competitive bidding
Date: Thursday, December 10, 2015 8:53:00 PM

We could do a call tomorrow on the language. The best times for us tomorrow would be 2PM or later. Would 2PM or a later time work?

From: Street, Amanda [mailto:Amanda.Street@mail.house.gov]
Sent: Thursday, December 10, 2015 7:43 PM
To: Yen, Lisa (CMS/OL)
Cc: Burney, Ira (CMS/OL); DiBlasio, Carla; Cross, Jesse; Shapiro, Jessica; Druckman, Jennifer (CMS/OL); D'Aquila, Dennis (Thune); Baker, Brett (Finance)
Subject: Re: TA on bill regarding competitive bidding

Hi Lisa and Ira,

Thank you again for taking the time the other day to walk through the language on the new reimbursement system. Based on our conversation, Jesse sent over an updated draft that I shared with you all and our friends over in the Senate, Dennis and Brett.

There are still a few lingering questions that need to be addressed that I think we can work through relatively quickly, but it'd be helpful if we could bring Brett and Dennis into the conversation. Would y'all be available for a follow up discussion with the whole group tomorrow?

Many thanks!
Amanda

From: Street, Amanda
To: [Lori Housman](#)
Cc: [Uehlecke, Nicholas](#); [Burney, Ira \(CMS/OL\)](#); [Grossman, Edward](#); [DiBlasio, Carla](#); [Palmer, Ashley](#); [Graff, Caleb](#)
Subject: Revised radiation offset
Date: Wednesday, December 2, 2015 5:55:03 PM
Attachments: [RADTHERAPY_01.xml\[5\].pdf](#)

Hi Lori,

Thanks to the great work by Ed and Ira, I think we've clarified the policy intent in this latest draft, which is attached to this email. Ed and Ira are also copied on this email to be sure that we're all on the same page and so that we can move the process along as quickly as possible.

Please let us know if there are any questions or concerns, and again thank you so much for your work and your patience on this!

Many thanks,

Amanda

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From: Street, Amanda
To: [Yen, Lisa \(CMS/OL\)](#); [Burney, Ira \(CMS/OL\)](#)
Cc: [DiBlasio, Carla](#); [Cross, Jesse](#); [Shapiro, Jessica](#)
Subject: TA on bill regarding competitive bidding
Date: Wednesday, November 18, 2015 2:43:58 PM
Attachments: [SECTION 1.docx](#)

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