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(Original Signature of Member)

114TH CONGRESS  
1ST SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

M\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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## A BILL

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare DMEPOS  
5 Market Pricing Demonstration Act of 2015”.

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

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

6 “DMEPOS MARKET-PRICING DEMONSTRATION PROJECT

7 “SEC. 1847C. (a) ESTABLISHMENT.—

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

19 “(2) ROLES OF AUCTION EXPERT AND MARKET  
20 MONITOR.—The elements of the demonstration  
21 project, including eligible auction areas, auction de-  
22 sign, establishing of clearing prices, and conduct of  
23 auctions, shall be established by the auction expert  
24 with input and review by the market monitor under  
25 subsection (f). In this section, the terms ‘auction ex-  
26 pert’ and ‘market monitor’ refer to the respective

1 auction expert and market monitor contracted with  
2 under subsection (f)(1).

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

6 “(A) CONTRACTING WITH AUCTION EX-  
7 PERT AND MARKET MONITOR.—Not later than  
8 3 months after the date of the enactment of  
9 this section, the Secretary shall contract with  
10 the auction expert and market monitor.

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

15 “(C) AUCTION DESIGN CONFERENCE.—  
16 Not later than 6 months after such date of en-  
17 actment, the Secretary shall hold the auction  
18 design conference under subsection (c)(2)(C).

19 “(D) FINALIZING AUCTION DETAILS.—Not  
20 later than 7 ½ months after such date of en-  
21 actment, the Secretary shall promulgate,  
22 through expedited rulemaking under subsection  
23 (c)(2)(D), the procedures to be used for auc-  
24 tions under the demonstration project.

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

5           “(F) AWARDING CONTRACTS UNDER FIRST  
6 AUCTION.—Not later than 1 year after such  
7 date of enactment, contracts under such auction  
8 shall be awarded.

9           “(4) ELIGIBLE AUCTION AREAS.—

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

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

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

3 “(C) SELECTION OF AUCTION AREAS.—In  
4 conducting the demonstration project, the Sec-  
5 retary shall select at least 10 eligible auction  
6 areas that constituted Round 2 Recompete com-  
7 petitive bidding areas under section 1847. To  
8 the extent possible areas selected for the dem-  
9 onstration project should represent a variety of  
10 econometric market models.

11 “(D) EXCLUSION OF CERTAIN AUCTION  
12 AREAS.—The Secretary shall not subject areas  
13 described in clause (iii) of section  
14 1847(a)(1)(D) to market program reimburse-  
15 ment rates under the demonstration project be-  
16 fore the year specified in such clause.

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

24 “(A) Subparagraph (C) (relating to waiver  
25 of certain provisions).

1           “(B) Subparagraph (E) (relating to  
2 verification by OIG), except that the assessment  
3 shall be of market pricing and subsequent pric-  
4 ing determinations that are the basis for auc-  
5 tion prices and single payment amounts for  
6 items and services in eligible auction areas and  
7 shall be conducted in the first two years of the  
8 demonstration project and may continue in sub-  
9 sequent years of the project.

10           “(C) Subparagraph (F) (relating to feed-  
11 back on missing financial documentation), ex-  
12 cept that any reference to a round of a program  
13 is deemed a reference to a year of the dem-  
14 onstration project.

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

18           “(1) Oxygen supplies and equipment.

19           “(2) Standard power wheelchairs, power scoot-  
20 ers, and related accessories.

21           “(3) Manual wheelchairs.

22           “(4) Enteral nutrients, equipment, and sup-  
23 plies.

1 “(5) Continuous positive airway pressure de-  
2 vices, respiratory assistive devices, and related sup-  
3 plies.

4 “(6) Hospital beds and related accessories.

5 “(7) Walkers and related accessories.

6 “(8) Support services (Group 2 mattresses and  
7 overlays).

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

10 “(10) Off-the-shelf orthotics described in sub-  
11 paragraph (C) of section 1847(a)(2) to the extent  
12 they are included pursuant to such subparagraph in  
13 items and services described under such section and  
14 included in a competitive bidding program in a com-  
15 petitive acquisition area under section 1847(a).

16 “(11) External infusion pumps and supplies.

17 “(12) Other items and services (other than  
18 those items and services specified in paragraph (2))  
19 that could have been subject to participation in com-  
20 petitive acquisition programs under section  
21 1847(a)(1).

22 “(c) DEMONSTRATION PRICING PROJECT REQUIRE-  
23 MENTS.—

24 “(1) IN GENERAL.—The Secretary shall estab-  
25 lish an auction design through the process described

1 in paragraph (2), that meets the requirements of  
2 paragraph (3), and shall ensure that the first auc-  
3 tion will be conducted for all eligible auction areas  
4 selected no later than 11 months after the date of  
5 the enactment of this section.

6 “(2) AUCTION DESIGN PROCESS; STAKE-  
7 HOLDERS INPUT.—

8 “(A) TRANSPARENT PROCESS RE-  
9 QUIRED.—In establishing such auction design,  
10 the Secretary shall utilize an open and trans-  
11 parent process that involves all eligible partici-  
12 pants described in subparagraph (C)(ii), includ-  
13 ing through the auction design conference and  
14 other outreach efforts.

15 “(B) INITIAL AUCTION DESIGN.—

16 “(i) IN GENERAL.—Not later than 5  
17 months after the date of the enactment of  
18 this section, the auction expert shall de-  
19 velop an initial auction design that shall  
20 propose eligible auction areas to be se-  
21 lected for the demonstration project, lead  
22 products for each product category, the  
23 price index associated with each lead prod-  
24 uct, and proposed rules for the conduct of  
25 auctions.

1                   “(ii) REQUIREMENTS.—In estab-  
2                   lishing the auction design, the Secretary  
3                   shall ensure that rates of payment devel-  
4                   oped through the auction process—

5                               “(I) are market-based and based  
6                               on binding bids and clearing prices;  
7                               and

8                               “(II) do not result in a diminu-  
9                               tion of access to or quality of market-  
10                              priced items and services in the eligi-  
11                              ble auction areas in which the dem-  
12                              onstration project is conducted.

13                   “(C) AUCTION DESIGN CONFERENCE.—

14                               “(i) IN GENERAL.—Not later than 6  
15                              months after the date of the enactment of  
16                              this section, the Secretary shall convene a  
17                              design conference (in this paragraph re-  
18                              ferred to as the ‘design conference’) for the  
19                              auction process under this section. The  
20                              auction expert shall chair the conference.

21                               “(ii) PARTICIPANTS.—The partici-  
22                              pants at the design conference shall in-  
23                              clude at least the following:

24                                       “(I) MANUFACTURERS, SUP-  
25                                       PLIERS AND TRADE ASSOCIATIONS OF

1 DMEPOS.—Representatives of market-  
2 priced items and services.

3 “(II) BENEFICIARIES.—Rep-  
4 resentatives of individuals entitled to  
5 benefits under this part.

6 “(III) CMS.—The Administrator  
7 of the Centers for Medicare & Med-  
8 icaid Services and other appropriate  
9 Federal personnel.

10 “(iii) PURPOSE OF CONFERENCE.—  
11 The purpose of the design conference shall  
12 be to review the initial auction design de-  
13 veloped by the auction expert under sub-  
14 paragraph (B) for the establishment of an  
15 efficient auction consistent with best prac-  
16 tices and actuarial science and to provide  
17 stakeholders the opportunity to provide  
18 feedback on the initial auction design.

19 “(iv) ELEMENTS OF CONFERENCE.—  
20 With respect to the design conference—

21 “(I) the auction expert shall pro-  
22 vide a demonstration of the prelimi-  
23 nary auction design;

24 “(II) the auction expert shall  
25 lead a mock auction based upon such

1 design in which the attendees will par-  
2 ticipate and offer comments and sug-  
3 gestions for improvement;

4 “(III) the auction expert shall in-  
5 vite input from suppliers as to the re-  
6 lationship between lead product prices  
7 and the value of other products in the  
8 category and may establish working  
9 committees on major issues; and

10 “(IV) the design conference shall  
11 be recorded and made available over  
12 the Internet through simultaneous  
13 Web cast or otherwise.

14 “(D) AUCTION DESIGN PROPOSED  
15 THROUGH EXPEDITED RULEMAKING.—Not later  
16 than 7½ months after the date of the enact-  
17 ment of this section the auction expert shall  
18 submit to the Secretary an auction design that  
19 takes into account the auction conference. Upon  
20 receiving the auction design, the Secretary shall  
21 publish and propose a rule for implementing  
22 such auction design through an expedited rule-  
23 making process. The Secretary shall submit  
24 comments received on such design to the auc-  
25 tion expert to consider for modification of the

1 auction design. Taking into consideration such  
2 comments, the auction expert shall determine if  
3 any changes should be made in the proposed  
4 auction design in response to such comments. If  
5 the auction expert determines that changes  
6 should be made in such design in response to  
7 such comments, the auction expert shall submit  
8 to the Secretary a revised auction design for  
9 promulgation. The Secretary shall publish by  
10 rule such revised auction design unless the Sec-  
11 retary determines and notifies the auction ex-  
12 pert and publishes in the Federal Register the  
13 reasons for not accepting the changes in the  
14 auction design. In this clause, the term ‘expe-  
15 dited rulemaking process’ means a process of  
16 publication of the proposed auction design and  
17 solicitation of public comments on such design.  
18 The provisions of section 1871(b)(1) shall not  
19 apply to such process.

20 “(3) CONDUCT OF AUCTION.—

21 “(A) INITIAL AUCTION.—No later than 11  
22 months after the date of the enactment of this  
23 section, the Secretary shall conduct auctions  
24 (each in this section referred to as a ‘market-  
25 priced auction’) among entities supplying mar-

1 ket-priced items and services in eligible auction  
2 areas that are selected in the auction design  
3 and consistent with subsection (a)(3). Market-  
4 based auctions shall be conducted in accordance  
5 with an auction design promulgated under  
6 paragraph (2)(D).

7 “(B) REQUIREMENTS TO SUBMIT BID IN  
8 AUCTION.—

9 “(i) SUBMISSION OF BIDS.—Any sup-  
10 plier that complies with the requirements  
11 of clause (ii) and that is identified by the  
12 Secretary pursuant to paragraph (5)(C) as  
13 a supplier of a market priced item or serv-  
14 ice that is the subject of a market-priced  
15 auction in an eligible auction area may  
16 submit a bid at such auction.

17 “(ii) LICENSURE REQUIREMENTS AND  
18 FINANCIAL ASSURANCES.—The licensure  
19 and performance guarantee requirements  
20 under section 1847(a)(1)(G) shall apply  
21 for purposes of auctions conducted under  
22 the demonstration project.

23 “(4) LEAD PRODUCT SELECTION FOR ESTAB-  
24 LISHING CLEARING PRICES.—

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

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

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

21                   “(ii) ADDITIONAL PRODUCTS IN EACH  
22                   PRODUCT CATEGORY.—Every other prod-  
23                   uct in the same product category as the  
24                   lead product identified under subparagraph  
25                   (A) shall be assigned a weight expressed as

1 a percentage of the lead product, which  
2 percentage of the clearing price, estab-  
3 lished by the auction expert in the plan de-  
4 sign and adjusted after input from pro-  
5 viders at the design plan conference, estab-  
6 lishes the price of each item and service in  
7 the category.

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

18 “(5) CONDUCT OF AUCTION.—

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

22 “(B) BEFORE AUCTION DATE.—Before the  
23 scheduled auction date, the Secretary shall de-  
24 tail auction rules that are consistent with the

1 auction plan developed under this section.

2 These rules shall include the following:

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

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

7 “(iii) Performance obligations of con-  
8 tract suppliers, guarantees, and penalties  
9 for nonperformance.

10 “(iv) The lead product established  
11 under paragraph (4)(A), the price index  
12 (described in paragraph (2)(B)), and the  
13 related health care common procedure cod-  
14 ing system codes for each product in each  
15 category and in each auction area.

16 “(C) BEFORE AUCTION DATE.—Before the  
17 scheduled auction date, the Secretary shall re-  
18 view all applicants and identify the qualified  
19 suppliers eligible to submit bids. In carrying out  
20 this subparagraph, the Secretary shall specify  
21 the following:

22 “(i) In the case of an eligible bidder  
23 with historic capacity in an auction area,  
24 the historic capacity for such bidder for

1 each category that will be subject to auc-  
2 tion.

3 “(ii) Each bidding supplier that has  
4 no historic capacity in an auction area  
5 shall be assigned a base capacity for each  
6 product category made available under the  
7 auction of 1 percent of the total dollar  
8 value of that item or service made available  
9 in the area.

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

12 “(D) IMMEDIATELY AFTER EACH AUCTION  
13 ROUND.—Immediately after each auction, the  
14 Secretary shall announce the remaining aggre-  
15 gate supply for the bidders still participating in  
16 the auction and the available supply which is  
17 being bid for, plus any other relevant informa-  
18 tion identified in the design conference.

19 “(E) AT CONCLUSION OF FINAL AUCTION  
20 ROUND.—Immediately after the final auction  
21 round, the Secretary shall announce the fol-  
22 lowing:

23 “(i) A list of winning suppliers.

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

4                   “(F) FINAL ACTIONS.—Not later than 1  
5                   year after the date of the enactment of this sec-  
6                   tion, the Secretary shall award contracts and  
7                   adjust the performance guarantees received  
8                   from each bidder to reflect the outcome of the  
9                   auction in accordance with paragraph (3)(B).

10                  “(6) CONDITIONS OF AWARDING CONTRACT.—

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

17                  “(B) TERMS OF CONTRACT.—

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

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

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

15          “(7) MONITORING ACCESS AND QUALITY.—

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

23               “(B) ENFORCEMENT.—If the Secretary,  
24               after consultation with the market monitor, de-  
25               termines that there has been a material failure

1 of a supplier that has been awarded a contract  
2 pursuant to paragraph (6) to comply with such  
3 requirements, the Secretary, after consultation  
4 with the market monitor, shall implement, con-  
5 sistent with subparagraph (C), enforcement  
6 measures, which may include the termination of  
7 a contract awarded under paragraph (6).

8 “(C) ENFORCEMENT MEASURES.—

9 “(i) WARNING LETTERS AND OPPOR-  
10 TUNITY FOR CORRECTIVE ACTION.—The  
11 Secretary shall provide for the following  
12 before terminating a contract awarded  
13 under paragraph (6):

14 “(I) WARNING LETTER.—The  
15 Secretary shall issue a formal warning  
16 letter at least 90 days before the ter-  
17 mination date. The warning letter  
18 shall describe the reason (or reasons)  
19 for the termination.

20 “(II) OPPORTUNITY FOR COR-  
21 RECTIVE ACTION.—The Secretary  
22 shall provide an opportunity for the  
23 supplier to take corrective action to  
24 come into compliance with the con-

1 tract and avoid termination of the  
2 contract.

3 “(ii) ADDITIONAL CONSEQUENCES OF  
4 TERMINATION.—In the case of a termi-  
5 nation of such a contract with a supplier,  
6 the Secretary may—

7 “(I) require forfeiture of amounts  
8 submitted as a performance deposit  
9 pursuant to paragraph (3)(B)(ii); and

10 “(II) terminate the supplier’s  
11 agreement to participate in the pro-  
12 gram under this title for a period not  
13 to exceed 2 years.

14 “(d) APPLICATION OF COMPETITIVE ACQUISITION  
15 PROGRAM PROVISIONS.—In implementing the demonstra-  
16 tion project under this section, the provisions of section  
17 1847(b) shall be applied as follows:

18 “(1) Paragraph (3) shall apply, except that, for  
19 purposes of contracts awarded under the demonstra-  
20 tion project, subparagraph (B) of such paragraph  
21 shall be applied by substituting ‘2 years’ for ‘3  
22 years’.

23 “(2) Paragraph (4) shall apply.

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

1           “(A) the reference in subparagraph (A) of  
2 such paragraph to subsection (a)(2) is deemed  
3 a reference to subsection (b)(1) of this section;  
4 and

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

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

10          “(5) Paragraph (8) shall apply.

11          “(6) Paragraph (9) shall apply, except that  
12 such paragraph shall be applied as if a reference to  
13 a bidding program includes a reference to the dem-  
14 onstration project.

15          “(7) Paragraph (10) shall apply, except that  
16 such paragraph shall be applied as if a reference to  
17 a competitive acquisition program includes a ref-  
18 erence to the demonstration project.

19          “(8) Paragraph (11) shall not apply, except  
20 that—

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

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

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

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

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

15           “(3) The quality standards and the perform-  
16          ance standards developed pursuant to subsection  
17          (c)(3)(B).

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

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

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

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

1 “(B) the number of winning and losing  
2 bidders at the auction; and

3 “(C) with respect to rejected bidders, the  
4 specific reasons they are not qualified to bid,  
5 and, with respect to any such rejection, a  
6 means of ensuring the availability of the process  
7 of review or appeal.

8 “(7) The calculation of and compliance with the  
9 requirement of section 1847(b)(6)(D), as made ap-  
10 plicable to the demonstration project by subsection  
11 (d).

12 “(f) RELIANCE ON AUCTION EXPERT AND MARKET  
13 MONITOR IN ESTABLISHING AND OPERATING MARKET-  
14 PRICING DEMONSTRATION PROJECT; ADVISORY COM-  
15 MITTEE REPORT AND MONITORING.—

16 “(1) AUCTION EXPERT AND MARKET MON-  
17 ITOR.—

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

1 functioning of the auction to be conducted pur-  
2 suant to subsection (b). The auction expert and  
3 market monitor shall report and be accountable  
4 to the Secretary.

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

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

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

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

19 “(II) is a current or former con-  
20 tractor for the Centers for Medicare &  
21 Medicaid Services that participated in  
22 the implementation of the competitive  
23 acquisition program under section  
24 1847(a);

1 “(III) does not have significant  
2 experience in implementing auctions  
3 of similar complexity in Government  
4 programs; and

5 “(IV) does not have appropriate  
6 educational credentials.

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

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

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

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

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

1           “(C) lead the auction, contracting, and  
2 other aspects of implementing the demonstra-  
3 tion project with the advice of the market mon-  
4 itor.

5           “(3) FUNCTIONS OF MARKET MONITOR.—

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

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

19           “(C) MONITORING.—

20           “(i) IN GENERAL.—The market mon-  
21 itor shall provide ongoing monitoring of  
22 the performance of suppliers and the ef-  
23 fects of the demonstration project to guard  
24 against the occurrence of any negative ef-  
25 fects specified in subsection (c)(7).

1                   “(ii) PROVIDE TRANSPARENCY OF IN-  
2                   FORMATION.—The monitoring under  
3                   clause (i) shall include public availability of  
4                   the number of suppliers providing market-  
5                   priced items and services in an eligible  
6                   auction area during each year of the oper-  
7                   ation of the demonstration project.

8                   “(D) SEMIANNUAL REPORTS TO SEC-  
9                   RETARY.—The market monitor shall provide  
10                  semiannual reports to the Secretary in the ini-  
11                  tial two years of the project and annually there-  
12                  after on the development and operations of the  
13                  demonstration project. In each report, the mon-  
14                  itor shall—

15                         “(i) identify potential problems with  
16                         the project; and

17                         “(ii) recommend solutions to problems  
18                         so identified.

19                   “(E) ANNUAL REPORT.—The market mon-  
20                  itor shall submit to the Committees on Ways  
21                  and Means and Energy and Commerce of the  
22                  House of Representatives and the Committee  
23                  on Finance of the Senate an annual report on  
24                  the operation and functioning of the demonstra-

1           tion project. Each such report shall include in-  
2           formation on—

3                   “(i) potential problems with the  
4                   project;

5                   “(ii) recommended solutions to prob-  
6                   lems identified pursuant to clause (i);

7                   “(iii) the appropriateness of HCPCS  
8                   codes selected for auctions;

9                   “(iv) an evaluation on the ability of  
10                  individuals eligible for benefits under this  
11                  part to obtain items and services subject to  
12                  the demonstration project;

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

15                  “(vi) any material deterioration in the  
16                  quality of items and services provided  
17                  under the project;

18                  “(vii) the costs of any preventable or  
19                  prolonged hospitalizations due to lack of  
20                  timely access to market-priced items and  
21                  services; and

22                  “(viii) any negative business con-  
23                  sequences to the supplier of any market-  
24                  priced items and services occurring as a re-

1                   sult of errors made in the conduct of the  
2                   project.”.

3           (b) LICENSURE REQUIREMENTS AND FINANCIAL AS-  
4 SURANCES UNDER COMPETITIVE BIDDING.—Section  
5 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w-  
6 3(a)(1)) is amended by adding at the end the following  
7 new subparagraphs:

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

16                   “(i) the entity meets applicable State  
17                   licensure requirements for such area for all  
18                   items in such bid for a product category;  
19                   and

20                   “(ii) the entity has submitted a cash  
21                   deposit as a bid and performance bond in  
22                   an amount determined by the Secretary  
23                   after consultation with the auction expert,  
24                   except that the Secretary may, in the Sec-  
25                   retary’s sole discretion, accept a letter of

1 credit from a financial institution accept-  
2 able to the Secretary in lieu of the cash de-  
3 posit required to be submitted under this  
4 clause.

5 “(H) TREATMENT OF BID AND PERFORM-  
6 ANCE BONDS SUBMITTED.—

7 “(i) FOR SUCCESSFUL BIDDERS.—The  
8 Secretary shall retain as a performance  
9 guarantee the deposit submitted by a sup-  
10 plier that is selected at an auction con-  
11 ducted pursuant to subparagraph (G)(ii)  
12 and such deposit—

13 “(I) shall be returned to the enti-  
14 ty within 90 days of the date of com-  
15 pletion of the contract; or

16 “(II) shall be retained by the  
17 Secretary if the contract is terminated  
18 before the expiration of the contract.

19 “(ii) UNSUCCESSFUL BIDDERS.—If a  
20 bidding entity submits a bid that is not ac-  
21 cepted for an area, the bid and perform-  
22 ance deposit submitted for the entity for  
23 such area shall be returned within 90 days  
24 of the date of notice of nonacceptance.”.

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

3 (1) IN GENERAL.—Section 1847(a)(2)(C) of the  
4 Social Security Act (42 U.S.C. 1395w–3(a)(2)(C)) is  
5 amended—

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

8 (B) by inserting after “minimal self-adjust-  
9 ment” the following: “by that individual (and  
10 not by another person)”; and

11 (C) by striking “to fit to the individual”  
12 and inserting “to fit to that individual”.

13 (2) EFFECTIVE DATE.—The amendments made  
14 by paragraph (1) shall apply to off-the-shelf  
15 orthotics (as defined in section 1847(a)(2)(C) of the  
16 Social Security Act, as amended by paragraph (1))  
17 furnished in rounds of competitive bidding under  
18 section 1847 of such Act initiated on or after such  
19 date, as soon as practicable after the date of the en-  
20 actment of this Act, as the Secretary of Health and  
21 Human Services determines appropriate. Such  
22 amendments only apply to the demonstration project  
23 under section 1847C of such Act if the Secretary  
24 implements competitive bidding for such off-the-shelf

- 1 orthotics under the competitive bidding program
- 2 under section 1847 of such Act.