

Calendar No. 874110TH CONGRESS
2D SESSION**S. 3236**

To amend titles XVIII and XIX of the Social Security Act to extend provisions under the Medicare and Medicaid programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 9, 2008

Mr. McCONNELL (for himself, Mr. GRASSLEY, and Mr. KYL) introduced the following bill; which was read the first time

JULY 11, 2008

Read the second time and placed on the calendar

A BILL

To amend titles XVIII and XIX of the Social Security Act to extend provisions under the Medicare and Medicaid programs, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare and Medicaid Extension Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE

- Sec. 101. Extension of physician payment update.
 Sec. 102. Extension of floor on Medicare work geographic adjustment under the Medicare physician fee schedule.
 Sec. 103. Extension of treatment of certain physician pathology services under Medicare.
 Sec. 104. Extension of exceptions process for Medicare therapy caps.
 Sec. 105. Extension of payment rule for brachytherapy and therapeutic radiopharmaceuticals.
 Sec. 106. Extension of accommodation of physicians ordered to active duty in the Armed Services.
 Sec. 107. Delay in and reform of Medicare DMEPOS competitive acquisition program.

TITLE II—MEDICAID

- Sec. 201. Extension of qualifying individual (QI) program.
 Sec. 202. Extension of transitional medical assistance (TMA) and abstinence education program.
 Sec. 203. Medicaid DSH extension.

TITLE III—CONTINGENCY

- Sec. 301. Contingency.

1 **TITLE I—MEDICARE**

2 **SEC. 101. EXTENSION OF PHYSICIAN PAYMENT UPDATE.**

3 (a) IN GENERAL.—Section 1848(d)(8) of the Social
 4 Security Act (42 U.S.C. 1395w-4(d)(8)), as added by sec-
 5 tion 101 of the Medicare, Medicaid, and SCHIP Extension
 6 Act of 2007 (Public Law 110-173), is amended—

7 (1) in subparagraph (A), by striking “June 30,
 8 2008” and inserting “July 31, 2008”; and

9 (2) in subparagraph (B), by striking “July 1,
 10 2008” and inserting “August 1, 2008”.

11 (b) REVISION OF THE PHYSICIAN ASSISTANCE AND
 12 QUALITY INITIATIVE FUND.—Section 1848(l)(2)(A)(i) of
 13 the Social Security Act (42 U.S.C. 1395w-4(l)(2)(A)(i)),

1 as amended by section 101(a)(2) of the Medicare, Med-
2 icaid, and SCHIP Extension Act of 2007 (Public Law
3 110–173) and by section 7002(c) of the Supplemental Ap-
4 propriations Act, 2008, is amended—

5 (1) in subclause (III), by inserting “ reduced by
6 \$600,000,000” before the period at the end; and

7 (2) in subclause (IV), by inserting “ increased
8 by \$220,000,000” before the period at the end.

9 (c) IMPLEMENTATION.—For purposes of carrying out
10 the provisions of, and amendments made by, this title, in
11 addition to any amounts otherwise provided in such provi-
12 sions and amendments, there are appropriated to the Cen-
13 ters for Medicare & Medicaid Services Program Manage-
14 ment Account, out of any money in the Treasury not oth-
15 erwise appropriated, \$20,000,000.

16 **SEC. 102. EXTENSION OF FLOOR ON MEDICARE WORK GEO-**
17 **GRAPHIC ADJUSTMENT UNDER THE MEDI-**
18 **CARE PHYSICIAN FEE SCHEDULE.**

19 (a) IN GENERAL.—Section 1848(e)(1)(E) of the So-
20 cial Security Act (42 U.S.C. 1395w–4(e)(1)(E)), as
21 amended by section 103 of the Medicare, Medicaid, and
22 SCHIP Extension Act of 2007 (Public Law 110–173), is
23 amended by striking “before July 1, 2008” and inserting
24 “before August 1, 2008”.

1 (b) TECHNICAL CORRECTION.—Section 602(1) of the
2 Medicare Prescription Drug, Improvement, and Mod-
3 ernization Act of 2003 (Public Law 108–173; 117 Stat.
4 2301) is amended to read as follows:

5 “(1) in subparagraph (A), by striking ‘subpara-
6 graphs (B), (C), and (E)’ and inserting ‘subpara-
7 graphs (B), (C), (E), and (G)’; and”.

8 **SEC. 103. EXTENSION OF TREATMENT OF CERTAIN PHYSI-**
9 **CIAN PATHOLOGY SERVICES UNDER MEDI-**
10 **CARE.**

11 Section 542(c) of the Medicare, Medicaid, and
12 SCHIP Benefits Improvement and Protection Act of 2000
13 (as enacted into law by section 1(a)(6) of Public Law 106–
14 554), as amended by section 732 of the Medicare Prescrip-
15 tion Drug, Improvement, and Modernization Act of 2003
16 (42 U.S.C. 1395w–4 note), section 104 of division B of
17 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
18 1395w–4 note), and section 104 of the Medicare, Med-
19 icaid, and SCHIP Extension Act of 2007 (Public Law
20 110–173), is amended by striking “the first 6 months of
21 2008” and inserting “the first 7 months of 2008”.

22 **SEC. 104. EXTENSION OF EXCEPTIONS PROCESS FOR MEDI-**
23 **CARE THERAPY CAPS.**

24 Section 1833(g)(5) of the Social Security Act (42
25 U.S.C. 1395l(g)(5)), as amended by section 105 of the

1 Medicare, Medicaid, and SCHIP Extension Act of 2007
2 (Public Law 110–173), is amended by striking “June 30,
3 2008” and inserting “July 31, 2008”.

4 **SEC. 105. EXTENSION OF PAYMENT RULE FOR**
5 **BRACHYTHERAPY AND THERAPEUTIC RADIO-**
6 **PHARMACEUTICALS.**

7 Section 1833(t)(16)(C) of the Social Security Act (42
8 U.S.C. 1395l(t)(16)(C)), as amended by section 106 of the
9 Medicare, Medicaid, and SCHIP Extension Act of 2007
10 (Public Law 110–173), is amended by striking “July 1,
11 2008” each place it appears and inserting “August 1,
12 2008”.

13 **SEC. 106. EXTENSION OF ACCOMMODATION OF PHYSICIANS**
14 **ORDERED TO ACTIVE DUTY IN THE ARMED**
15 **SERVICES.**

16 Section 1842(b)(6)(D)(iii) of the Social Security Act
17 (42 U.S.C. 1395u(b)(6)(D)(iii)), as amended by section
18 116 of the Medicare, Medicaid, and SCHIP Extension Act
19 of 2007 (Public Law 110–173), is amended by striking
20 “July 1, 2008” and inserting “August 1, 2008”.

21 **SEC. 107. DELAY IN AND REFORM OF MEDICARE DMEPOS**
22 **COMPETITIVE ACQUISITION PROGRAM.**

23 (a) TEMPORARY DELAY AND REFORM.—

1 (1) IN GENERAL.—Section 1847(a) of the So-
2 cial Security Act (42 U.S.C. 1395w–3(a)) is amend-
3 ed—

4 (A) in paragraph (1)—

5 (i) in subparagraph (B)(i), in the
6 matter before subclause (I), by inserting
7 “consistent with subparagraph (D)” after
8 “in a manner”;

9 (ii) in subparagraph (B)(i)(II), by
10 striking “80” and “in 2009” and inserting
11 “an additional 70” and “in 2011”, respec-
12 tively;

13 (iii) in subparagraph (B)(i)(III), by
14 striking “after 2009” and inserting “after
15 2011 (or, in the case of national mail order
16 for items and services, after 2010)”; and

17 (iv) by adding at the end the following
18 new subparagraphs:

19 “(D) CHANGES IN COMPETITIVE ACQUISI-
20 TION PROGRAMS.—

21 “(i) ROUND 1 OF COMPETITIVE AC-
22 QUISITION PROGRAM.—Notwithstanding
23 subparagraph (B)(i)(I) and in imple-
24 menting the first round of the competitive
25 acquisition programs under this section—

1 “(I) the contracts awarded under
2 this section before the date of the en-
3 actment of this subparagraph are ter-
4 minated, no payment shall be made
5 under this title on or after the date of
6 the enactment of this subparagraph
7 based on such a contract, and, to the
8 extent that any damages may be ap-
9 plicable as a result of the termination
10 of such contracts, such damages shall
11 be payable from the Federal Supple-
12 mentary Medical Insurance Trust
13 Fund under section 1841;

14 “(II) the Secretary shall conduct
15 the competition for such round in a
16 manner so that it occurs in 2009 with
17 respect to the same items and services
18 and the same areas, except as pro-
19 vided in subclauses (III) and (IV);

20 “(III) the Secretary shall exclude
21 Puerto Rico so that such round of
22 competition covers 9, instead of 10, of
23 the largest metropolitan statistical
24 areas; and

1 “(IV) there shall be excluded
2 negative pressure wound therapy
3 items and services.

4 Nothing in subclause (I) shall be construed
5 to provide an independent cause of action
6 or right to administrative or judicial review
7 with regard to the termination provided
8 under such subclause.

9 “(ii) ROUND 2 OF COMPETITIVE AC-
10 QUISITION PROGRAM.—In implementing
11 the second round of the competitive acqui-
12 sition programs under this section de-
13 scribed in subparagraph (B)(i)(II)—

14 “(I) the metropolitan statistical
15 areas to be included shall be those
16 metropolitan statistical areas selected
17 by the Secretary for such round as of
18 June 1, 2008; and

19 “(II) the Secretary may sub-
20 divide metropolitan statistical areas
21 with populations (based upon the
22 most recent data from the Census Bu-
23 reau) of at least 8,000,000 into sepa-
24 rate areas for competitive acquisition
25 purposes.

1 “(iii) EXCLUSION OF CERTAIN AREAS
2 IN SUBSEQUENT ROUNDS OF COMPETITIVE
3 ACQUISITION PROGRAMS.—In imple-
4 menting subsequent rounds of the competi-
5 tive acquisition programs under this sec-
6 tion, including under subparagraph
7 (B)(i)(III), for competitions occurring be-
8 fore 2015, the Secretary shall exempt from
9 the competitive acquisition program (other
10 than national mail order) the following:

11 “(I) Rural areas.

12 “(II) Metropolitan statistical
13 areas not selected under round 1 or
14 round 2 with a population of less than
15 250,000.

16 “(III) Areas with a low popu-
17 lation density within a metropolitan
18 statistical area that is otherwise se-
19 lected, as determined for purposes of
20 paragraph (3)(A).

21 “(E) VERIFICATION BY OIG.—The Inspec-
22 tor General of the Department of Health and
23 Human Services shall, through post-award
24 audit, survey, or otherwise, assess the process
25 used by the Centers for Medicare & Medicaid

1 Services to conduct competitive bidding and
2 subsequent pricing determinations under this
3 section that are the basis for pivotal bid
4 amounts and single payment amounts for items
5 and services in competitive bidding areas under
6 rounds 1 and 2 of the competitive acquisition
7 programs under this section and may continue
8 to verify such calculations for subsequent
9 rounds of such programs.

10 “(F) SUPPLIER FEEDBACK ON MISSING FI-
11 NANCIAL DOCUMENTATION.—

12 “(i) IN GENERAL.—In the case of a
13 bid where one or more covered documents
14 in connection with such bid have been sub-
15 mitted not later than the covered document
16 review date specified in clause (ii), the Sec-
17 retary—

18 “(I) shall provide, by not later
19 than 45 days (in the case of the first
20 round of the competitive acquisition
21 programs as described in subpara-
22 graph (B)(i)(I)) or 90 days (in the
23 case of a subsequent round of such
24 programs) after the covered document
25 review date, for notice to the bidder of

1 all such documents that are missing
2 as of the covered document review
3 date; and

4 “(II) may not reject the bid on
5 the basis that any covered document
6 is missing or has not been submitted
7 on a timely basis, if all such missing
8 documents identified in the notice pro-
9 vided to the bidder under subclause
10 (I) are submitted to the Secretary not
11 later than 10 business days after the
12 date of such notice.

13 “(ii) COVERED DOCUMENT REVIEW
14 DATE.—The covered document review date
15 specified in this clause with respect to a
16 competitive acquisition program is the
17 later of—

18 “(I) the date that is 30 days be-
19 fore the final date specified by the
20 Secretary for submission of bids
21 under such program; or

22 “(II) the date that is 30 days
23 after the first date specified by the
24 Secretary for submission of bids
25 under such program.

1 “(iii) LIMITATIONS OF PROCESS.—

2 The process provided under this subpara-
3 graph—

4 “(I) applies only to the timely
5 submission of covered documents;

6 “(II) does not apply to any deter-
7 mination as to the accuracy or com-
8 pleteness of covered documents sub-
9 mitted or whether such documents
10 meet applicable requirements;

11 “(III) shall not prevent the Sec-
12 retary from rejecting a bid based on
13 any basis not described in clause
14 (i)(II); and

15 “(IV) shall not be construed as
16 permitting a bidder to change bidding
17 amounts or to make other changes in
18 a bid submission.

19 “(iv) COVERED DOCUMENT DE-
20 FINED.—In this subparagraph, the term
21 ‘covered document’ means a financial, tax,
22 or other document required to be sub-
23 mitted by a bidder as part of an original
24 bid submission under a competitive acqui-
25 sition program in order to meet required

1 financial standards. Such term does not in-
2 clude other documents, such as the bid
3 itself or accreditation documentation.”;
4 and

5 (B) in paragraph (2)(A), by inserting be-
6 fore the period at the end the following: “and
7 excluding certain complex rehabilitative power
8 wheelchairs recognized by the Secretary as clas-
9 sified within group 3 or higher (and related ac-
10 cessories when furnished in connection with
11 such wheelchairs)”.

12 (2) BUDGET NEUTRAL OFFSET.—

13 (A) IN GENERAL.—Section 1834(a)(14) of
14 such Act (42 U.S.C. 1395m(a)(14)) is amend-
15 ed—

16 (i) by striking “and” at the end of
17 subparagraphs (H) and (I);

18 (ii) by redesignating subparagraph (J)
19 as subparagraph (M); and

20 (iii) by inserting after subparagraph
21 (I) the following new subparagraphs:

22 “(J) for 2009—

23 “(i) in the case of items and services
24 furnished in any geographic area, if such
25 items or services were selected for competi-

1 tive acquisition in any area under the com-
2 petitive acquisition program under section
3 1847(a)(1)(B)(i)(I) before July 1, 2008,
4 including related accessories but only if
5 furnished with such items and services se-
6 lected for such competition and diabetic
7 supplies but only if furnished through mail
8 order, - 9.5 percent; or

9 “(ii) in the case of other items and
10 services, the percentage increase in the
11 consumer price index for all urban con-
12 sumers (U.S. urban average) for the 12-
13 month period ending with June 2008;

14 “(K) for 2010, 2011, 2012, and 2013, the
15 percentage increase in the consumer price index
16 for all urban consumers (U.S. urban average)
17 for the 12-month period ending with June of
18 the previous year;

19 “(L) for 2014—

20 “(i) in the case of items and services
21 described in subparagraph (J)(i) for which
22 a payment adjustment has not been made
23 under subsection (a)(1)(F)(ii) in any pre-
24 vious year, the percentage increase in the
25 consumer price index for all urban con-

1 consumers (U.S. urban average) for the 12-
2 month period ending with June 2013, plus
3 2.0 percentage points; or

4 “(ii) in the case of other items and
5 services, the percentage increase in the
6 consumer price index for all urban con-
7 sumers (U.S. urban average) for the 12-
8 month period ending with June 2013;
9 and”.

10 (B) CONFORMING TREATMENT FOR CER-
11 TAIN ITEMS AND SERVICES.—The second sen-
12 tence of section 1842(s)(1) of such Act (42
13 U.S.C. 1395u(s)(1)) is amended by striking
14 “except that” and all that follows and inserting
15 the following: “except that for items and serv-
16 ices described in paragraph (2)(D)—

17 “(A) for 2009 section 1834(a)(14)(J)(i) shall
18 apply under this paragraph instead of the percent-
19 age increase otherwise applicable; and

20 “(B) for 2014, if subparagraph (A) is applied
21 to the items and services and there has not been a
22 payment adjustment under paragraph (3)(B) for the
23 items and services for any previous year, the per-
24 centage increase computed under section

1 1834(a)(14)(L)(i) shall apply instead of the percent-
2 age increase otherwise applicable.”.

3 (3) CONFORMING DELAY.—Subsections
4 (a)(1)(F) and (h)(1)(H) of section 1834 of the So-
5 cial Security Act (42 U.S.C. 1395m) are each
6 amended by striking “January 1, 2009” and insert-
7 ing “January 1, 2011”.

8 (4) CONSIDERATIONS IN APPLICATION.—Sec-
9 tion 1834 of such Act (42 U.S.C. 1395m) is amend-
10 ed—

11 (A) in subsection (a)(1)—

12 (i) in subparagraph (F), by inserting
13 “subject to subparagraph (G),” before
14 “that are included”; and

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

17 “(G) USE OF INFORMATION ON COMPETI-
18 TIVE BID RATES.—The Secretary shall specify
19 by regulation the methodology to be used in ap-
20 plying the provisions of subparagraph (F)(ii)
21 and subsection (h)(1)(H)(ii). In promulgating
22 such regulation, the Secretary shall consider the
23 costs of items and services in areas in which
24 such provisions would be applied compared to

1 the payment rates for such items and services
2 in competitive acquisition areas.”; and

3 (B) in subsection (h)(1)(H), by inserting
4 “subject to subsection (a)(1)(G),” before “that
5 are included”.

6 (b) QUALITY STANDARDS.—

7 (1) APPLICATION OF ACCREDITATION REQUIRE-
8 MENT.—

9 (A) IN GENERAL.—Section 1834(a)(20) of
10 the Social Security Act (42 U.S.C.
11 1395m(a)(20)) is amended—

12 (i) in subparagraph (E), by inserting
13 “including subparagraph (F),” after
14 “under this paragraph,”; and

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

17 “(F) APPLICATION OF ACCREDITATION RE-
18 QUIREMENT.—In implementing quality stand-
19 ards under this paragraph—

20 “(i) subject to clause (ii), the Sec-
21 retary shall require suppliers furnishing
22 items and services described in subpara-
23 graph (D) on or after October 1, 2009, di-
24 rectly or as a subcontractor for another en-
25 tity, to have submitted to the Secretary

1 evidence of accreditation by an accredita-
2 tion organization designated under sub-
3 paragraph (B) as meeting applicable qual-
4 ity standards; and

5 “(ii) in applying such standards and
6 the accreditation requirement of clause (i)
7 with respect to eligible professionals (as
8 defined in section 1848(k)(3)(B)), and in-
9 cluding such other persons, such as
10 orthotists and prosthetists, as specified by
11 the Secretary, furnishing such items and
12 services—

13 “(I) such standards and accredi-
14 tation requirement shall not apply to
15 such professionals and persons unless
16 the Secretary determines that the
17 standards being applied are designed
18 specifically to be applied to such pro-
19 fessionals and persons; and

20 “(II) the Secretary may exempt
21 such professionals and persons from
22 such standards and requirement if the
23 Secretary determines that licensing,
24 accreditation, or other mandatory
25 quality requirements apply to such

1 professionals and persons with respect
2 to the furnishing of such items and
3 services.”.

4 (B) CONSTRUCTION.—Section
5 1834(a)(20)(F)(ii) of the Social Security Act,
6 as added by subparagraph (A), shall not be con-
7 strued as preventing the Secretary of Health
8 and Human Services from implementing the
9 first round of competition under section 1847
10 of such Act on a timely basis.

11 (2) DISCLOSURE OF SUBCONTRACTORS UNDER
12 COMPETITIVE ACQUISITION PROGRAM.—Section
13 1847(b)(3) of such Act (42 U.S.C. 1395w-3(b)(3))
14 is amended by adding at the end the following new
15 subparagraph:

16 “(C) DISCLOSURE OF SUBCONTRAC-
17 TORS.—

18 “(i) INITIAL DISCLOSURE.—Not later
19 than 10 days after the date a supplier en-
20 ters into a contract with the Secretary
21 under this section, such supplier shall dis-
22 close to the Secretary, in a form and man-
23 ner specified by the Secretary, the infor-
24 mation on—

1 “(I) each subcontracting relation-
2 ship that such supplier has in fur-
3 nishing items and services under the
4 contract; and

5 “(II) whether each such subcon-
6 tractor meets the requirement of sec-
7 tion 1834(a)(20)(F)(i), if applicable
8 to such subcontractor.

9 “(ii) SUBSEQUENT DISCLOSURE.—Not
10 later than 10 days after such a supplier
11 subsequently enters into a subcontracting
12 relationship described in clause (i)(II),
13 such supplier shall disclose to the Sec-
14 retary, in such form and manner, the in-
15 formation described in subclauses (I) and
16 (II) of clause (i).”.

17 (3) COMPETITIVE ACQUISITION OMBUDSMAN.—
18 Section 1847 of such Act (42 U.S.C. 1395w-3) is
19 amended by adding at the end the following new
20 subsection:

21 “(f) COMPETITIVE ACQUISITION OMBUDSMAN.—The
22 Secretary shall provide for a competitive acquisition om-
23 budsman within the Centers for Medicare & Medicaid
24 Services in order to respond to complaints and inquiries
25 made by suppliers and individuals relating to the applica-

1 tion of the competitive acquisition program under this sec-
2 tion. The ombudsman may be within the office of the
3 Medicare Beneficiary Ombudsman appointed under sec-
4 tion 1808(c). The ombudsman shall submit to Congress
5 an annual report on the activities under this subsection,
6 which report shall be coordinated with the report provided
7 under section 1808(c)(2)(C).”.

8 (c) CHANGE IN REPORTS AND DEADLINES.—

9 (1) GAO REPORT.—Section 302(b)(3) of the
10 Medicare Prescription Drug, Improvement, and
11 Modernization Act of 2003 (Public Law 108-173) is
12 amended—

13 (A) in subparagraph (A)—

14 (i) by inserting “and as amended by
15 section 2 of the Medicare DMEPOS Com-
16 petitive Acquisition Reform Act of 2008”
17 after “as amended by paragraph (1)”;

18 (ii) by inserting before the period at
19 the end the following: “and the topics spec-
20 ified in subparagraph (C)”;

21 (B) in subparagraph (B), by striking “Not
22 later than January 1, 2009,” and inserting
23 “Not later than 1 year after the first date that
24 payments are made under section 1847 of the
25 Social Security Act,”; and

1 (C) by adding at the end the following new
2 subparagraph:

3 “(C) TOPICS.—The topics specified in this
4 subparagraph, for the study under subpara-
5 graph (A) concerning the competitive acquisi-
6 tion program, are the following:

7 “(i) Beneficiary access to items and
8 services under the program, including the
9 impact on such access of awarding con-
10 tracts to bidders that—

11 “(I) did not have a physical pres-
12 ence in an area where they received a
13 contract; or

14 “(II) had no previous experience
15 providing the product category they
16 were contracted to provide.

17 “(ii) Beneficiary satisfaction with the
18 program and cost savings to beneficiaries
19 under the program.

20 “(iii) Costs to suppliers of partici-
21 pating in the program and recommenda-
22 tions about ways to reduce those costs
23 without compromising quality standards or
24 savings to the Medicare program.

1 “(iv) Impact of the program on small
2 business suppliers.

3 “(v) Analysis of the impact on utiliza-
4 tion of different items and services paid
5 within the same Healthcare Common Pro-
6 cedure Coding System (HCPCS) code.

7 “(vi) Costs to the Centers for Medi-
8 care & Medicaid Services, including pay-
9 ments made to contractors, for admin-
10 istering the program compared with ad-
11 ministration of a fee schedule, in compari-
12 son with the relative savings of the pro-
13 gram.

14 “(vii) Impact on access, Medicare
15 spending, and beneficiary spending of any
16 difference in treatment for diabetic testing
17 supplies depending on how such supplies
18 are furnished.

19 “(viii) Such other topics as the Comp-
20 troller General determines to be appro-
21 priate.”.

22 (2) DELAY IN OTHER DEADLINES.—

23 (A) PROGRAM ADVISORY AND OVERSIGHT
24 COMMITTEE.—Section 1847(c)(5) of the Social
25 Security Act (42 U.S.C. 1395w-3(c)(5)) is

1 amended by striking “December 31, 2009” and
2 inserting “December 31, 2011”.

3 (B) SECRETARIAL REPORT.—Section
4 1847(d) of such Act (42 U.S.C. 1395w–3(d)) is
5 amended by striking “July 1, 2009” and insert-
6 ing “July 1, 2011”.

7 (C) IG REPORT.—Section 302(e) of the
8 Medicare Prescription Drug, Improvement, and
9 Modernization Act of 2003 (Public Law 108-
10 173) is amended by striking “July 1, 2009”
11 and inserting “July 1, 2011”.

12 (3) EVALUATION OF CERTAIN CODE.—The Sec-
13 retary of Health and Human Services shall evaluate
14 the existing Health Care Common Procedure Coding
15 System (HCPCS) codes for negative pressure wound
16 therapy to ensure accurate reporting and billing for
17 items and services under such codes. In carrying out
18 such evaluation, the Secretary shall use an existing
19 process, administered by the Durable Medical Equip-
20 ment Medicare Administrative Contractors, for the
21 consideration of coding changes and consider all rel-
22 evant studies and information furnished pursuant to
23 such process.

24 (d) OTHER PROVISIONS.—

1 (1) EXEMPTION FROM COMPETITIVE ACQUISITION FOR CERTAIN OFF-THE-SHELF ORTHOTICS.—
2 Section 1847(a) of the Social Security Act (42
3 U.S.C. 1395w-3(a)) is amended by adding at the
4 end the following new paragraph:
5

6 “(7) EXEMPTION FROM COMPETITIVE ACQUISITION.—The programs under this section shall not
7 apply to the following:
8

9 “(A) CERTAIN OFF-THE-SHELF
10 ORTHOTICS.—Items and services described in
11 paragraph (2)(C) if furnished—

12 “(i) by a physician or other practitioner (as defined by the Secretary) to the
13 physician’s or practitioner’s own patients
14 as part of the physician’s or practitioner’s
15 professional service; or
16

17 “(ii) by a hospital to the hospital’s
18 own patients during an admission or on
19 the date of discharge.

20 “(B) CERTAIN DURABLE MEDICAL EQUIPMENT.—Those items and services described in
21 paragraph (2)(A)—

22 “(i) that are furnished by a hospital
23 to the hospital’s own patients during an
24 admission or on the date of discharge; and
25

1 “(ii) to which such programs would
2 not apply, as specified by the Secretary, if
3 furnished by a physician to the physician’s
4 own patients as part of the physician’s
5 professional service.”.

6 (2) CORRECTION IN FACE-TO-FACE EXAMINA-
7 TION REQUIREMENT.—Section 1834(a)(1)(E)(ii) of
8 such Act (42 U.S.C. 1395m(a)(1)(E)(ii)) is amended
9 by striking “1861(r)(1)” and inserting “1861(r)”.

10 (3) SPECIAL RULE IN CASE OF NATIONAL MAIL-
11 ORDER COMPETITION FOR DIABETIC TESTING
12 STRIPS.—Section 1847(b) of such Act (42 U.S.C.
13 1395w–3(b)) is amended—

14 (A) by redesignating paragraph (10) as
15 paragraph (11); and

16 (B) by inserting after paragraph (9) the
17 following new paragraph:

18 “(10) SPECIAL RULE IN CASE OF COMPETITION
19 FOR DIABETIC TESTING STRIPS.—

20 “(A) IN GENERAL.—With respect to the
21 competitive acquisition program for diabetic
22 testing strips conducted after the first round of
23 the competitive acquisition programs, if an enti-
24 ty does not demonstrate to the Secretary that
25 its bid covers types of diabetic testing strip

1 products that, in the aggregate and taking into
2 account volume for the different products, cover
3 50 percent (or such higher percentage as the
4 Secretary may specify) of all such types of
5 products, the Secretary shall reject such bid.
6 The volume for such types of products may be
7 determined in accordance with such data (which
8 may be market based data) as the Secretary
9 recognizes.

10 “(B) STUDY OF TYPES OF TESTING STRIP
11 PRODUCTS.—Before 2011, the Inspector Gen-
12 eral of the Department of Health and Human
13 Services shall conduct a study to determine the
14 types of diabetic testing strip products by vol-
15 ume that could be used to make determinations
16 pursuant to subparagraph (A) for the first com-
17 petition under the competitive acquisition pro-
18 gram described in such subparagraph and sub-
19 mit to the Secretary a report on the results of
20 the study. The Inspector General shall also con-
21 duct such a study and submit such a report be-
22 fore the Secretary conducts a subsequent com-
23 petitive acquisition program described in sub-
24 paragraph (A).”.

1 (4) OTHER CONFORMING AMENDMENTS.—Sec-
2 tion 1847(b)(11) of such Act, as redesignated by
3 paragraph (3), is amended—

4 (A) in subparagraph (C), by inserting “and
5 the identification of areas under subsection
6 (a)(1)(D)(iii)” after “(a)(1)(A)”;

7 (B) in subparagraph (D), by inserting
8 “and implementation of subsection (a)(1)(D)”
9 after “(a)(1)(B)”;

10 (C) in subparagraph (E), by striking “or”
11 at the end;

12 (D) in subparagraph (F), by striking the
13 period at the end and inserting “; or”; and

14 (E) by adding at the end the following new
15 subparagraph:

16 “(G) the implementation of the special rule
17 described in paragraph (10).”.

18 (5) FUNDING FOR IMPLEMENTATION.—In addi-
19 tion to funds otherwise available, for purposes of im-
20 plementing the provisions of, and amendments made
21 by, this section, other than the amendment made by
22 subsection (c)(1) and other than section
23 1847(a)(1)(E) of the Social Security Act, the Sec-
24 retary of Health and Human Services shall provide
25 for the transfer from the Federal Supplementary

1 Medical Insurance Trust Fund established under
2 section 1841 of the Social Security Act (42 U.S.C.
3 1395t) to the Centers for Medicare & Medicaid Serv-
4 ices Program Management Account of \$20,000,000
5 for fiscal year 2008, and \$25,000,000 for each of
6 fiscal years 2009 through 2012. Amounts trans-
7 ferred under this paragraph for a fiscal year shall be
8 available until expended.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect as of June 30, 2008.

11 **TITLE II—MEDICAID**

12 **SEC. 201. EXTENSION OF QUALIFYING INDIVIDUAL (QI)** 13 **PROGRAM.**

14 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
15 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
16 amended by striking “June” and inserting “July”.

17 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
18 ALLOCATION.—Section 1933(g)(2)(I) of the Social Secu-
19 rity Act (42 U.S.C. 1396u–3(g)(2)(I)) is amended—

20 (1) by striking “June 30” and inserting “July
21 31”;

22 (2) by striking “\$200,000,000” and inserting
23 “\$250,000,000”.

1 **SEC. 202. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-**
2 **ANCE (TMA) AND ABSTINENCE EDUCATION**
3 **PROGRAM.**

4 Section 401 of division B of the Tax Relief and
5 Health Care Act of 2006 (Public Law 109–432, 120 Stat.
6 2994), as amended by section 1 of Public Law 110–48
7 (121 Stat. 244), section 2 of the TMA, Abstinence, Edu-
8 cation, and QI Programs Extension Act of 2007 (Public
9 Law 110–90, 121 Stat. 984), and section 202 of the Medi-
10 care, Medicaid, and SCHIP Extension Act of 2007 (Public
11 Law 110–173), is amended—

12 (1) by striking “June 30” and inserting “July
13 31”;

14 (2) by striking “the third quarter of fiscal year
15 2008” and inserting “July 31, 2008”; and

16 (3) by striking “the third quarter of fiscal year
17 2007” and inserting “July 31, 2007”.

18 **SEC. 203. MEDICAID DSH EXTENSION.**

19 Section 1923(f)(6) of the Social Security Act (42
20 U.S.C. 1396r–4(f)(6)) is amended—

21 (1) in subparagraph (A)(i), in the second sen-
22 tence—

23 (A) by striking “June 30” and inserting
24 “July 31”; and

25 (B) by striking “ $\frac{3}{4}$ ” and inserting “ $\frac{5}{6}$ ”;
26 and

1 (2) in subparagraph (B)(i)—

2 (A) in the first sentence, by striking “June
3 30” and inserting “July 31”; and

4 (B) by striking “\$7,500,000” and insert-
5 ing “\$8,333,333”.

6 **TITLE III—CONTINGENCY**

7 **SEC. 301. CONTINGENCY.**

8 If a bill entitled the “Medicare Improvements for Pa-
9 tients and Providers Act of 2008” is enacted, before, on,
10 or after the date of enactment of this Act, except for sec-
11 tions 101(c), the provisions of, and amendments made by,
12 this Act are repealed and any Act amended by such
13 amendments shall be administered as if such provisions
14 and amendments had not been enacted.

Calendar No. 874

110TH CONGRESS
2^D SESSION

S. 3236

A BILL

To amend titles XVIII and XIX of the Social Security Act to extend provisions under the Medicare and Medicaid programs, and for other purposes.

JULY 11, 2008

Read the second time and placed on the calendar