

114TH CONGRESS
1ST SESSION

S. 2312

To amend titles XVIII and XIX of the Social Security Act to make improvements to payments for durable medical equipment under the Medicare and Medicaid programs.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2015

Mr. THUNE (for himself, Ms. HEITKAMP, Mr. ROBERTS, Mr. KING, Mr. CRAPO, Ms. COLLINS, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to make improvements to payments for durable medical equipment under the Medicare and Medicaid programs.

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 “DME Access and Sta-
5 bilization Act of 2015”.

1 **SEC. 2. REVISION OF PAYMENTS FOR DURABLE MEDICAL**
 2 **EQUIPMENT UNDER THE MEDICARE PRO-**
 3 **GRAM.**

4 (a) TRANSITION TO IMPLEMENTATION OF FEE
 5 SCHEDULE PAYMENT ADJUSTMENTS USING INFORMA-
 6 TION FROM COMPETITIVE BIDDING PROGRAMS.—Section
 7 1834(a)(1) of the Social Security Act (42 U.S.C.
 8 1395m(a)(1)) is amended by adding at the end the fol-
 9 lowing new subparagraph:

10 “(J) TRANSITION TO IMPLEMENTATION OF
 11 PAYMENT ADJUSTMENTS USING INFORMATION
 12 FROM COMPETITIVE BIDDING PROGRAMS.—

13 “(i) IN GENERAL.—In implementing
 14 subparagraph (F) and paragraphs (1) and
 15 (2) of section 414.210(g) of title 42, Code
 16 of Federal Regulations with respect to
 17 items and services furnished on or after
 18 January 1, 2016, and before January 1,
 19 2019, the fee schedule amount that would
 20 otherwise be determined for each area
 21 under this section shall be adjusted to the
 22 lesser of—

23 “(I) the applicable percent of the
 24 regional price determined under
 25 clause (i) of such paragraph (1) for

1 the region in which such area is lo-
2 cated; and

3 “(II) the fee schedule amount
4 that would otherwise be determined
5 for such area under this section on
6 January 1, 2015, updated by the cov-
7 ered item update described in para-
8 graph (14)(L) for the year in which
9 the items and services to which such
10 fee schedule applies are furnished.

11 “(ii) APPLICABLE PERCENT.—For
12 purposes of clause (i)(I), the term ‘applica-
13 ble percent’ means—

14 “(I) for an area defined as a
15 rural area for purposes of such sec-
16 tion 414.210(g) or an area in a fron-
17 tier State (as defined in section
18 1886(d)(3)(E)(iii)(II)), 130 percent;
19 and

20 “(II) for any other area, 120 per-
21 cent.

22 “(iii) PHASE-IN.—The adjustment de-
23 scribed in clause (i) shall be implemented
24 over a two-year period and in a manner
25 that phases in such adjustment in equal

1 increments in each year of such two-year
2 period, with such adjustment being fully
3 implemented with respect to items and
4 services furnished in 2017.”.

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

9 (1) in subparagraph (A)—

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

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

14 (2) by adding at the end the following new sub-
15 paragraph:

16 “(E) BID CEILING FOR DURABLE MEDICAL
17 EQUIPMENT.—In the case of covered items (as
18 defined in section 1834(a)(13)) for which pay-
19 ment would otherwise be made under section
20 1834(a) that are furnished with respect to com-
21 petitive bid contracts that begin on or after
22 January 1, 2019, the Secretary may not estab-
23 lish a ceiling on bids submitted under this sec-
24 tion for such items that is less than the amount
25 that would otherwise be paid for such items

1 under section 1834 (without the application of
2 subsection (a)(1)(F) of such section) on Janu-
3 ary 1, 2015, updated by the covered item up-
4 date described in subsection (a)(14)(L) of such
5 section for the year in which such covered item
6 is furnished.”.

7 (c) REQUIREMENTS IN DETERMINING ADJUSTMENTS
8 USING INFORMATION FROM COMPETITIVE BIDDING PRO-
9 GRAMS.—Section 1834(a)(1)(G) of the Social Security Act
10 (42 U.S.C. 1395m(a)(1)(G)) is amended by adding at the
11 end the following new sentence: “In the case of items and
12 services furnished on or after January 1, 2019, in making
13 any adjustments under clause (ii) or (iii) of subparagraph
14 (F), the Secretary shall solicit and receive stakeholder
15 input and shall also take into account the average travel
16 distance and cost associated with furnishing items and
17 services in a competitive acquisition area, the average vol-
18 ume of items and services furnished by providers in such
19 an area, the clearing price of items and services, and the
20 number of providers in competitive acquisition areas com-
21 pared to the number of providers in non-competitive acqui-
22 sition areas.”.

1 **SEC. 3. LIMITING FEDERAL MEDICAID REIMBURSEMENT**
2 **TO STATES FOR DURABLE MEDICAL EQUIP-**
3 **MENT (DME) TO MEDICARE PAYMENT RATES.**

4 (a) **MEDICAID REIMBURSEMENT.**—

5 (1) **IN GENERAL.**—Section 1903(i) of the Social
6 Security Act (42 U.S.C. 1396b(i)) is amended—

7 (A) in paragraph (25), by striking “or” at
8 the end;

9 (B) in paragraph (26), by striking the pe-
10 riod at the end and inserting “; or”; and

11 (C) by inserting after paragraph (26) the
12 following new paragraph:

13 “(27) with respect to any amounts expended by
14 the State on the basis of a fee schedule for items de-
15 scribed in section 1861(n), as determined in the ag-
16 gregate with respect to each class of such items as
17 defined by the Secretary, in excess of the aggregate
18 amount, if any, that would be paid for such items
19 within such class on a fee-for-service basis under the
20 program under part B of title XVIII, including, as
21 applicable, under a competitive acquisition program
22 under section 1847 in an area of the State.”.

23 (2) **EFFECTIVE DATE.**—The amendments made
24 by this subsection shall be effective with respect to
25 payments for items furnished on or after January 1,
26 2020.

1 (b) MEDICARE BENEFICIARY OMBUDSMAN.—Section
2 1808(c) of the Social Security Act (42 U.S.C. 1395b(e))
3 is amended by adding at the end the following new para-
4 graph:

5 “(4) MONITORING DME REIMBURSEMENT
6 UNDER MEDICAID.—The Medicare Beneficiary Om-
7 budsman shall evaluate the impact of the competitive
8 acquisition program under section 1847, including
9 as applied under section 1903(i)(27), on beneficiary
10 health status and health outcomes.”.

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