110TH CONGRESS  
1ST SESSION  

H. R. _____

To amend part B of title XVIII of the Social Security Act to assure access to durable medical equipment under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

Mr. Tanner (for himself and Mr. Hobson) introduced the following bill; which was referred to the Committee on _______________________

A BILL

To amend part B of title XVIII of the Social Security Act to assure access to durable medical equipment under the Medicare Program.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Medicare Durable Medical Equipment Access Act of 2007”.


SEC. 2. BENEFICIARY PROTECTIONS.

(a) Application of Quality Standards.—Section 1847(b)(2)(B) of the Social Security Act (42 U.S.C. 1395w–3(b)(2)(B)) is amended to read as follows:

“(B) Application of quality standards and receipt of advice from oversight committee.—The Secretary may not award any contracts under the competitive acquisition program under this section unless—

“(i) the quality standards have been implemented under section 1834(a)(20);

and

“(ii) the Secretary has received advice from the program oversight committee established under subsection (c).”.

(b) Requiring Use of Exemptions.—Section 1847(a)(3) of such Act (42 U.S.C. 1395w–3(a)(3)) is amended by striking “may exempt” and inserting “shall exempt”.

c) Exemption of Smaller MSAs.—Section 1847(a)(3)(A) of such Act (42 U.S.C. 1395w–3(a)(3)(A)) is amended by inserting “(including any metropolitan statistical area with a population of less than 500,000)” after “rural areas”.

d) Application of Federal Advisory Committee Act (FACA) to Program Advisory and Over-
Section 1847(c)(4) of such Act (42 U.S.C. 1395w–3(c)(4)) is amended to read as follows:

“(4) Applicability of FACA.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Committee.”.

(e) Effective Date.—The amendments made by this section shall be effective as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173).

SEC. 3. SMALL SUPPLIER PROTECTIONS.

(a) Qualified Supplier Participation.—Section 1847(b) of the Social Security Act (42 U.S.C. 1395w–3(b)) is amended—

(1) in paragraph (4)(A), by striking “The Secretary may limit” and inserting “Subject to paragraph (6)(D), the Secretary may limit”; and

(2) in paragraph (6)(D), by adding at the end the following: “Such appropriate steps shall include permitting all suppliers to continue to participate as suppliers at the selected award price so long as they submit bids at less than the fee schedule amount otherwise applicable to the items and they otherwise comply with applicable program requirements.”.
(b) Restoration of Due Process.—Section 1847(b)(10) of such Act (42 U.S.C. 1395w–3(b)(10)) is amended—

(1) by striking “NO ADMINISTRATIVE OR JUDICIAL REVIEW” and inserting “RESTORATION OF APPEAL RIGHTS”; and

(2) by striking “There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of” and inserting “Administrative and judicial review shall only be available under section 1869 (and not otherwise) of”.

(c) Application of Requirement for Significant Savings.—Section 1847(a) of such Act (42 U.S.C. 1395w–3(a)) is amended—

(1) in paragraph (3)(B), by inserting “of at least 10 percent” after “significant savings”; and

(2) in paragraph (1), by adding at the end the following new subparagraph:

“(D) REQUIREMENT FOR SIGNIFICANT SAVINGS.—The Secretary shall not implement a program under this section with respect to an item or service unless the Secretary demonstrates a probability of achieving significant savings of at least 10 percent, compared to the
fee schedule in effect on January 1, 2007, by including the item or service in the program.”.

(d) COMPARABILITY ANALYSIS.—Section 1834(a)(1) of such Act (42 U.S.C. 1395m(a)(1)) is amended—

(1) in subparagraph (F), by inserting “subject to subparagraph (G),” after “2009,”; and

(2) by adding at the end the following new sub-
paragraphs:

“(G) REQUIREMENT FOR COMPARABILITY ANALYSIS BEFORE IMPLEMENTATION.—The Secretary may not implement subparagraph (F) with respect to the application of rates in an area that is not a competitive acquisition area under section 1847 unless the Secretary has completed and published in the Federal Register a comparability analysis to ensure the application is appropriate. The comparability analysis shall include at least an analysis of the relative costs of providing the particular items and services in the respective metropolitan statistical areas and an assessment of whether application of the bid rate in an area that is not a competitive acquisition area would adversely impact beneficiary access to quality items and services.
“(H) Application of comparability analysis requirement to certain other Part B items and services.—Subparagraph (G) shall also apply to the implementation of section 1847(a) with respect to items described in paragraph (2)(B) or (2)(C) of such section that are furnished on or after January 1, 2009.”.

(e) Effective Date.—The amendments made by this section shall be effective as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173).

SEC. 4. REPORT ON QUALITY AND ACCESS IMPACT OF IMPLEMENTATION AT 10 INITIAL COMPETITIVE ACQUISITION AREAS.

(a) Analysis and Report.—After the Secretary of Health and Human Services has fully implemented the initial 10 competitive acquisition areas under section 1847 of the Social Security Act, the Secretary shall conduct a complete analysis of the impact of competitive bidding in those areas, including its impact on beneficiary access to quality products and its impact on providers of items and services covered under competition and shall submit a report to Congress on such analysis.
(b) Moratorium on Further Implementation Until Congressional Action.—

(1) In General.—Notwithstanding any other provision of law, the Secretary shall not expand the coverage of competitive acquisition programs under section 1847(a) of the Social Security Act (42 U.S.C. 1395w-3(a)), or apply bid rates to non-bid areas under such section, beyond the 10 competitive acquisition areas identified under paragraph (1)(B)(i)(I) of such section as of the date of the enactment of this Act, unless specifically authorized by Congress after such date.

(2) Conforming Reference.—Section 1847(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w-3(a)(1)(B)) is amended, in the matter before clause (i), by striking “The programs” and inserting “Subject to section 4(b)(1) of the Medicare Durable Medical Equipment Access Act of 2007, the programs”.