

SEC. 302. PAYMENT FOR DURABLE MEDICAL EQUIPMENT; COMPETITIVE ACQUISITION OF CERTAIN ITEMS AND SERVICES.

(a) QUALITY ENHANCEMENT AND FRAUD REDUCTION.—

(1) ESTABLISHMENT OF QUALITY STANDARDS AND ACCREDITATION REQUIREMENTS FOR DURABLE MEDICAL EQUIPMENT SUPPLIERS.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended—

(A) by transferring paragraph (17), as added by section 4551(c)(1) of the Balanced Budget Act of 1997 (111 Stat. 458), to the end of such section and redesignating such paragraph as paragraph (19); and

(B) by adding at the end the following new paragraph:

“(20) IDENTIFICATION OF QUALITY STANDARDS.—

“(A) IN GENERAL.—Subject to subparagraph (C), the Secretary shall establish and implement quality standards for suppliers of items and services described in subparagraph (D) to be applied by recognized independent accreditation organizations (as designated under subparagraph (B)) and with which such suppliers shall be required to comply in order to—

“(i) furnish any such item or service for which payment is made under this part; and

“(ii) receive or retain a provider or supplier number used to submit claims for reimbursement for any such item or service for which payment may be made under this title.

“(B) DESIGNATION OF INDEPENDENT ACCREDITATION ORGANIZATIONS.—Not later than the date that is 1 year after the date on which the Secretary implements the quality standards under subparagraph (A), notwithstanding section 1865(b), the Secretary shall designate and approve one or more independent accreditation organizations for purposes of such subparagraph.

“(C) QUALITY STANDARDS.—The quality standards described in subparagraph (A) may not be less stringent than the quality standards that would otherwise apply if this paragraph did not apply and shall include consumer services standards.

“(D) ITEMS AND SERVICES DESCRIBED.—The items and services described in this subparagraph are the following items and services, as the Secretary determines appropriate:

“(i) Covered items (as defined in paragraph (13)) for which payment may otherwise be made under this subsection.

“(ii) Prosthetic devices and orthotics and prosthetics described in section 1834(h)(4).

“(iii) Items and services described in section 1842(s)(2).

“(E) IMPLEMENTATION.—The Secretary may establish by program instruction or otherwise the quality standards under this paragraph, after consultation with representatives of relevant parties. Such standards shall be applied prospectively and shall be published on the Internet website of the Centers for Medicare & Medicaid Services.”.

(2) ESTABLISHMENT OF CLINICAL CONDITIONS OF COVERAGE STANDARDS FOR ITEMS OF DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(1) (42 U.S.C. 1395m(a)(1)) is amended by adding at the end the following new subparagraph:

“(E) CLINICAL CONDITIONS FOR COVERAGE.—

“(i) IN GENERAL.—The Secretary shall establish standards for clinical conditions for payment for covered items under this subsection.

“(ii) REQUIREMENTS.—The standards established under clause (i) shall include the specification of types or classes of covered items that require, as a condition of payment under this subsection, a face-to-face examination of the individual by a physician (as defined in section 1861(r)(1)), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) and a prescription for the item.

“(iii) PRIORITY OF ESTABLISHMENT OF STANDARDS.—In establishing the standards under this subparagraph, the Secretary shall first establish standards for those covered items for which the Secretary determines there has been a proliferation of use, consistent findings of charges for covered items that are not delivered, or consistent findings of falsification of documentation to provide for payment of such covered items under this part.

“(iv) STANDARDS FOR POWER WHEELCHAIRS.—Effective on the date of the enactment of this subparagraph, in the case of a covered item consisting of a motorized or power wheelchair for an individual, payment may not be made for such covered item unless a physician (as defined in section 1861(r)(1)), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) has conducted a face-to-face examination of the individual and written a prescription for the item.

“(v) LIMITATION ON PAYMENT FOR COVERED ITEMS.—Payment may not be made for a covered item under this subsection unless the item meets any standards established under this subparagraph for clinical condition of coverage.”.

(b) COMPETITIVE ACQUISITION.—

(1) IN GENERAL.—Section 1847 (42 U.S.C. 1395w-3) is amended to read as follows:

“COMPETITIVE ACQUISITION OF CERTAIN ITEMS AND SERVICES

“SEC. 1847. (a) ESTABLISHMENT OF COMPETITIVE ACQUISITION PROGRAMS.—

“(1) IMPLEMENTATION OF PROGRAMS.—

“(A) IN GENERAL.—The Secretary shall establish and implement programs under which competitive acquisition areas are established throughout the United States for contract award purposes for the furnishing under this part of competitively priced items and services (described in paragraph (2)) for which payment is made under this part. Such areas may differ for different items and services.

“(B) PHASED-IN IMPLEMENTATION.—The programs—

“(i) shall be phased in among competitive acquisition areas in a manner so that the competition under the programs occurs in—

“(I) 10 of the largest metropolitan statistical areas in 2007;

“(II) 80 of the largest metropolitan statistical areas in 2009; and

“(III) additional areas after 2009; and

“(ii) may be phased in first among the highest cost and highest volume items and services or those items and services that the Secretary determines have the largest savings potential.

“(C) WAIVER OF CERTAIN PROVISIONS.—In carrying out the programs, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

“(2) ITEMS AND SERVICES DESCRIBED.—The items and services referred to in paragraph (1) are the following:

“(A) DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES.—Covered items (as defined in section 1834(a)(13)) for which payment would otherwise be made under section 1834(a), including items used in infusion and drugs (other than inhalation drugs) and supplies used in conjunction with durable medical equipment, but excluding class III devices under the Federal Food, Drug, and Cosmetic Act.

“(B) OTHER EQUIPMENT AND SUPPLIES.—Items and services described in section 1842(s)(2)(D), other than parenteral nutrients, equipment, and supplies.

“(C) OFF-THE-SHELF ORTHOTICS.—Orthotics described in section 1861(s)(9) for which payment would otherwise be made under section 1834(h) which require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

“(3) EXCEPTION AUTHORITY.—In carrying out the programs under this section, the Secretary may exempt—

“(A) rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item or service; and

“(B) items and services for which the application of competitive acquisition is not likely to result in significant savings.

“(4) SPECIAL RULE FOR CERTAIN RENTED ITEMS OF DURABLE MEDICAL EQUIPMENT AND OXYGEN.—In the case of a covered item for which payment is made on a rental basis under section 1834(a) and in the case of payment for oxygen under section 1834(a)(5), the Secretary shall establish a process by which rental agreements for the covered items and supply arrangements with oxygen suppliers entered into before the application of the competitive acquisition program under this section for the item may be continued notwithstanding this section. In the case of any such continuation, the supplier involved shall

provide for appropriate servicing and replacement, as required under section 1834(a).

“(5) PHYSICIAN AUTHORIZATION.—

“(A) IN GENERAL.—With respect to items or services included within a particular HCPCS code, the Secretary may establish a process for certain items and services under which a physician may prescribe a particular brand or mode of delivery of an item or service within such code if the physician determines that use of the particular item or service would avoid an adverse medical outcome on the individual, as determined by the Secretary.

“(B) NO EFFECT ON PAYMENT AMOUNT.—A prescription under subparagraph (A) shall not affect the amount of payment otherwise applicable for the item or service under the code involved.

“(6) APPLICATION.—For each competitive acquisition area in which the program is implemented under this subsection with respect to items and services, the payment basis determined under the competition conducted under subsection (b) shall be substituted for the payment basis otherwise applied under section 1834(a), section 1834(h), or section 1842(s), as appropriate.

“(b) PROGRAM REQUIREMENTS.—

“(1) IN GENERAL.—The Secretary shall conduct a competition among entities supplying items and services described in subsection (a)(2) for each competitive acquisition area in which the program is implemented under subsection (a) with respect to such items and services.

“(2) CONDITIONS FOR AWARDED CONTRACT.—

“(A) IN GENERAL.—The Secretary may not award a contract to any entity under the competition conducted in an competitive acquisition area pursuant to paragraph (1) to furnish such items or services unless the Secretary finds all of the following:

“(i) The entity meets applicable quality standards specified by the Secretary under section 1834(a)(20).

“(ii) The entity meets applicable financial standards specified by the Secretary, taking into account the needs of small providers.

“(iii) The total amounts to be paid to contractors in a competitive acquisition area are expected to be less than the total amounts that would otherwise be paid.

“(iv) Access of individuals to a choice of multiple suppliers in the area is maintained.

“(B) TIMELY IMPLEMENTATION OF PROGRAM.—Any delay in the implementation of quality standards under section 1834(a)(20) or delay in the receipt of advice from the program oversight committee established under subsection (c) shall not delay the implementation of the competitive acquisition program under this section.

“(3) CONTENTS OF CONTRACT.—

“(A) IN GENERAL.—A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify.

“(B) TERM OF CONTRACTS.—The Secretary shall recompute contracts under this section not less often than once every 3 years.

“(4) LIMIT ON NUMBER OF CONTRACTORS.—

“(A) IN GENERAL.—The Secretary may limit the number of contractors in a competitive acquisition area to the number needed to meet projected demand for items and services covered under the contracts. In awarding contracts, the Secretary shall take into account the ability of bidding entities to furnish items or services in sufficient quantities to meet the anticipated needs of individuals for such items or services in the geographic area covered under the contract on a timely basis.

“(B) MULTIPLE WINNERS.—The Secretary shall award contracts to multiple entities submitting bids in each area for an item or service.

“(5) PAYMENT.—

“(A) IN GENERAL.—Payment under this part for competitively priced items and services described in subsection (a)(2) shall be based on bids submitted and accepted under this section for such items and services. Based on such bids the Secretary shall determine a single payment amount for each item or service in each competitive acquisition area.

“(B) REDUCED BENEFICIARY COST-SHARING.—

“(i) APPLICATION OF COINSURANCE.—Payment under this section for items and services shall be in an amount equal to 80 percent of the payment basis described in subparagraph (A).

“(ii) APPLICATION OF DEDUCTIBLE.—Before applying clause (i), the individual shall be required to meet the deductible described in section 1833(b).

“(C) PAYMENT ON ASSIGNMENT-RELATED BASIS.—Payment for any item or service furnished by the entity may only be made under this section on an assignment-related basis.

“(D) CONSTRUCTION.—Nothing in this section shall be construed as precluding the use of an advanced beneficiary notice with respect to a competitively priced item and service.

“(6) PARTICIPATING CONTRACTORS.—

“(A) IN GENERAL.—Except as provided in subsection (a)(4), payment shall not be made for items and services described in subsection (a)(2) furnished by a contractor and for which competition is conducted under this section unless—

“(i) the contractor has submitted a bid for such items and services under this section; and

“(ii) the Secretary has awarded a contract to the contractor for such items and services under this section.

“(B) BID DEFINED.—In this section, the term ‘bid’ means an offer to furnish an item or service for a particular price and time period that includes, where appropriate, any services that are attendant to the furnishing of the item or service.

“(C) RULES FOR MERGERS AND ACQUISITIONS.—In applying subparagraph (A) to a contractor, the contractor shall include a successor entity in the case of a merger or acquisition, if the successor entity assumes such contract along with any liabilities that may have occurred thereunder.

“(D) PROTECTION OF SMALL SUPPLIERS.—In developing procedures relating to bids and the awarding of contracts under this section, the Secretary shall take appropriate steps to ensure that small suppliers of items and services have an opportunity to be considered for participation in the program under this section.

“(7) CONSIDERATION IN DETERMINING CATEGORIES FOR BIDS.—The Secretary may consider the clinical efficiency and value of specific items within codes, including whether some items have a greater therapeutic advantage to individuals.

“(8) AUTHORITY TO CONTRACT FOR EDUCATION, MONITORING, OUTREACH, AND COMPLAINT SERVICES.—The Secretary may enter into contracts with appropriate entities to address complaints from individuals who receive items and services from an entity with a contract under this section and to conduct appropriate education of and outreach to such individuals and monitoring quality of services with respect to the program.

“(9) AUTHORITY TO CONTRACT FOR IMPLEMENTATION.—The Secretary may contract with appropriate entities to implement the competitive bidding program under this section.

“(10) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of—

“(A) the establishment of payment amounts under paragraph (5);

“(B) the awarding of contracts under this section;

“(C) the designation of competitive acquisition areas under subsection (a)(1)(A);

“(D) the phased-in implementation under subsection (a)(1)(B);

“(E) the selection of items and services for competitive acquisition under subsection (a)(2); or

“(F) the bidding structure and number of contractors selected under this section.

“(c) PROGRAM ADVISORY AND OVERSIGHT COMMITTEE.—

“(1) ESTABLISHMENT.—The Secretary shall establish a Program Advisory and Oversight Committee (hereinafter in this section referred to as the ‘Committee’).

“(2) MEMBERSHIP; TERMS.—The Committee shall consist of such members as the Secretary may appoint who shall serve for such term as the Secretary may specify.

“(3) DUTIES.—

“(A) ADVICE.—The Committee shall provide advice to the Secretary with respect to the following functions:

“(i) The implementation of the program under this section.

“(ii) The establishment of financial standards for purposes of subsection (b)(2)(A)(ii).

“(iii) The establishment of requirements for collection of data for the efficient management of the program.

“(iv) The development of proposals for efficient interaction among manufacturers, providers of services, suppliers (as defined in section 1861(d)), and individuals.

“(v) The establishment of quality standards under section 1834(a)(20).

“(B) ADDITIONAL DUTIES.—The Committee shall perform such additional functions to assist the Secretary in carrying out this section as the Secretary may specify.

“(4) INAPPLICABILITY OF FACCA.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply.

“(5) TERMINATION.—The Committee shall terminate on December 31, 2009.

“(d) REPORT.—Not later than July 1, 2009, the Secretary shall submit to Congress a report on the programs under this section. The report shall include information on savings, reductions in cost-sharing, access to and quality of items and services, and satisfaction of individuals.

“(e) DEMONSTRATION PROJECT FOR CLINICAL LABORATORY SERVICES.—

“(1) IN GENERAL.—The Secretary shall conduct a demonstration project on the application of competitive acquisition under this section to clinical diagnostic laboratory tests—

“(A) for which payment would otherwise be made under section 1833(h) (other than for pap smear laboratory tests under paragraph (7) of such section) or section 1834(d)(1) (relating to colorectal cancer screening tests); and

“(B) which are furnished by entities that did not have a face-to-face encounter with the individual.

“(2) TERMS AND CONDITIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), such project shall be under the same conditions as are applicable to items and services described in subsection (a)(2), excluding subsection (b)(5)(B) and other conditions as the Secretary determines to be appropriate.

“(B) APPLICATION OF CLIA QUALITY STANDARDS.—The quality standards established by the Secretary under section 353 of the Public Health Service Act for clinical diagnostic laboratory tests shall apply to such tests under the demonstration project under this section in lieu of quality standards described in subsection (b)(2)(A)(i).

“(3) REPORT.—The Secretary shall submit to Congress—

“(A) an initial report on the project not later than December 31, 2005; and

“(B) such progress and final reports on the project after such date as the Secretary determines appropriate.”.

(2) CONFORMING AMENDMENTS.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking “and (U)” and inserting “(U)”;

(B) by inserting before the semicolon at the end the following: “, and (V) notwithstanding subparagraphs (I) (relating to durable medical equipment), (M) (relating to prosthetic devices and orthotics and prosthetics), and (Q) (relating to 1842(s) items), with respect to competitively priced items and services (described in section 1847(a)(2)) that are furnished in a competitive area, the amounts

paid shall be the amounts described in section 1847(b)(5)”;
and

(C) in clause (D)—

- (i) by striking “or (ii)” and inserting “(ii)”; and
- (ii) by adding at the end the following: “or (iii) on the basis of a rate established under a demonstration project under section 1847(e), the amount paid shall be equal to 100 percent of such rate,”.

(3) GAO REPORT ON IMPACT OF COMPETITIVE ACQUISITION ON SUPPLIERS.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study on the impact of competitive acquisition of durable medical equipment under section 1847 of the Social Security Act, as amended by paragraph (1), on suppliers and manufacturers of such equipment and on patients. Such study shall specifically examine the impact of such competitive acquisition on access to, and quality of, such equipment and service related to such equipment.

(B) REPORT.—Not later than January 1, 2009, the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A) and shall include in the report such recommendations as the Comptroller General determines appropriate.

(c) TRANSITIONAL FREEZE.—

(1) DME.—

(A) IN GENERAL.—Section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended—

(i) in subparagraph (E), by striking “and” at the end;

(ii) in subparagraph (F)—

(I) by striking “a subsequent year” and inserting “2003”; and

(II) by striking “the previous year.” and inserting “2002;”;

(iii) by adding at the end the following new subparagraphs:

“(G) for 2004 through 2006—

“(i) subject to clause (ii), in the case of class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)(1)(C)), the percentage increase described in subparagraph (B) for the year involved; and

“(ii) in the case of covered items not described in clause (i), 0 percentage points;

“(H) for 2007—

“(i) subject to clause (ii), in the case of class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)(1)(C)), the percentage change determined by the Secretary to be appropriate taking into account recommendations contained in the report of the Comptroller General of the United States under section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

“(ii) in the case of covered items not described in clause (i), 0 percentage points; and

“(I) for 2008—

“(i) subject to clause (ii), in the case of class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)(1)(C)), the percentage increase described in subparagraph (B) (as applied to the payment amount for 2007 determined after the application of the percentage change under subparagraph (H)(i)); and

“(ii) in the case of covered items not described in clause (i), 0 percentage points; and

“(J) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.”

(B) GAO REPORT ON CLASS III MEDICAL DEVICES.—Not later than March 1, 2006, the Comptroller General of the United States shall submit to Congress, and transmit to the Secretary, a report containing recommendations on the appropriate update percentage under section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) for class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)(C)) furnished to medicare beneficiaries during 2007 and 2008.

(2) PAYMENT RULE FOR SPECIFIED ITEMS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

“(21) SPECIAL PAYMENT RULE FOR SPECIFIED ITEMS AND SUPPLIES.—

“(A) IN GENERAL.—Notwithstanding the preceding provisions of this subsection, for specified items and supplies (described in subparagraph (B)) furnished during 2005, the payment amount otherwise determined under this subsection for such specified items and supplies shall be reduced by the percentage difference between—

“(i) the amount of payment otherwise determined for the specified item or supply under this subsection for 2002, and

“(ii) the amount of payment for the specified item or supply under chapter 89 of title 5, United States Code, as identified in the column entitled ‘Median FEHP Price’ in the table entitled ‘SUMMARY OF MEDICARE PRICES COMPARED TO VA, MEDICAID, RETAIL, AND FEHP PRICES FOR 16 ITEMS’ included in the Testimony of the Inspector General before the Senate Committee on Appropriations, June 12, 2002, or any subsequent report by the Inspector General.

“(B) SPECIFIED ITEM OR SUPPLY DESCRIBED.—For purposes of subparagraph (A), a specified item or supply means oxygen and oxygen equipment, standard wheelchairs (including standard power wheelchairs), nebulizers, diabetic supplies consisting of lancets and testing strips, hospital beds, and air mattresses, but only if the HCPCS code for the item or supply is identified in a table referred to in subparagraph (A)(ii).

“(C) APPLICATION OF UPDATE TO SPECIAL PAYMENT AMOUNT.—The covered item update under paragraph (14) for specified items and supplies for 2006 and each subsequent year shall be applied to the payment amount under subparagraph (A) unless payment is made for such items and supplies under section 1847.”.

(3) PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—Section 1834(h)(4)(A) (42 U.S.C. 1395m(h)(4)(A)) is amended—

(A) in clause (vii), by striking “and” at the end;

(B) in clause (viii), by striking “a subsequent year” and inserting “2003”; and

(C) by adding at the end the following new clauses:

“(ix) for 2004, 2005, and 2006, 0 percent; and

“(x) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year.”.

(d) CONFORMING AMENDMENTS.—

(1) DURABLE MEDICAL EQUIPMENT; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended—

(A) in paragraph (1)(B), by striking “The payment basis” and inserting “Subject to subparagraph (F)(i), the payment basis”;

(B) in paragraph (1)(C), by striking “This subsection” and inserting “Subject to subparagraph (F)(ii), this subsection”;

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

“(F) APPLICATION OF COMPETITIVE ACQUISITION; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—In the case of covered items furnished on or after January 1, 2009, that are included in a competitive acquisition program in a competitive acquisition area under section 1847(a)—

“(i) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

“(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1847 and in the case of such adjustment, paragraph (10)(B) shall not be applied.”; and

(D) in paragraph (10)(B), by inserting “in an area and with respect to covered items and services for which the Secretary does not make a payment amount adjustment under paragraph (1)(F)” after “under this subsection”.

(2) OFF-THE-SHELF ORTHOTICS; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—Section 1834(h) (42 U.S.C. 1395m(h)) is amended—

(A) in paragraph (1)(B), by striking “and (E)” and inserting “, (E), and (H)(i)”;

(B) in paragraph (1)(D), by striking “This subsection” and inserting “Subject to subparagraph (H)(ii), this subsection”; and

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

“(H) APPLICATION OF COMPETITIVE ACQUISITION TO ORTHOTICS; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—In the case of orthotics described in paragraph (2)(C) of section 1847(a) furnished on or after January 1, 2009, that are included in a competitive acquisition program in a competitive acquisition area under such section—

“(i) the payment basis under this subsection for such orthotics furnished in such area shall be the payment basis determined under such competitive acquisition program; and

“(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1847, and in the case of such adjustment, paragraphs (8) and (9) of section 1842(b) shall not be applied.”.

(3) OTHER ITEMS AND SERVICES; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—Section 1842(s) (42 U.S.C. 1395u(s)) is amended—

(A) in the first sentence of paragraph (1), by striking “The Secretary” and inserting “Subject to paragraph (3), the Secretary”; and

(B) by adding at the end the following new paragraph:

“(3) In the case of items and services described in paragraph (2)(D) that are included in a competitive acquisition program in a competitive acquisition area under section 1847(a)—

“(A) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

“(B) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise applicable under paragraph (1) for an area that is not a competitive acquisition area under section 1847, and in the case of such adjustment, paragraphs (8) and (9) of section 1842(b) shall not be applied.”.

(e) REPORT ON ACTIVITIES OF SUPPLIERS.—The Inspector General of the Department of Health and Human Services shall conduct a study to determine the extent to which (if any) suppliers of covered items of durable medical equipment that are subject to the competitive acquisition program under section 1847 of the Social Security Act, as amended by subsection (a), are soliciting physicians to prescribe certain brands or modes of delivery of covered items based on profitability. Not later than July 1, 2009, the Inspector General shall submit to Congress a report on such study.

SEC. 303. PAYMENT REFORM FOR COVERED OUTPATIENT DRUGS AND BIOLOGICALS.

(a) ADJUSTMENT TO PHYSICIAN FEE SCHEDULE.—