

114TH CONGRESS  
2D SESSION

# S. 2736

To improve access to durable medical equipment for Medicare beneficiaries under the Medicare program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 17, 2016

Mr. THUNE (for himself, Ms. HEITKAMP, Mr. ROBERTS, Mr. CRAPO, Mr. ROUNDS, Mrs. CAPITO, Mr. GRASSLEY, Mr. MANCHIN, Mr. DAINES, Mr. BARRASSO, Mr. COCHRAN, Ms. HIRONO, Mr. BENNET, Mrs. ERNST, Mr. KING, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To improve access to durable medical equipment for Medicare beneficiaries under 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 “Patient Access to Du-  
5 rable Medical Equipment Act of 2016”.

1 **SEC. 2. EXTENSION OF THE TRANSITION TO NEW PAYMENT**  
 2 **RATES FOR DURABLE MEDICAL EQUIPMENT**  
 3 **UNDER THE MEDICARE PROGRAM.**

4 The Secretary of Health and Human Services shall  
 5 extend the transition period described in clause (i) of sec-  
 6 tion 414.210(g)(9) of title 42, Code of Federal Regula-  
 7 tions, from June 30, 2016, to September 30, 2017 (with  
 8 the full implementation described in clause (ii) of such sec-  
 9 tion applying to items and services furnished with dates  
 10 of service on or after October 1, 2017).

11 **SEC. 3. BID CEILING FOR COMPETITIVE ACQUISITION FOR**  
 12 **DURABLE MEDICAL EQUIPMENT UNDER THE**  
 13 **MEDICARE PROGRAM.**

14 Section 1847(b)(5) of the Social Security Act (42  
 15 U.S.C. 1395w-3(b)(5)) is amended—

16 (1) in subparagraph (A)—

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

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

21 (2) by adding at the end the following new sub-  
 22 paragraph:

23 “(E) BID CEILING FOR DURABLE MEDICAL  
 24 EQUIPMENT.—

25 “(i) IN GENERAL.—The ceiling for a  
 26 bid submitted for applicable covered items

1 may not be less than the fee schedule  
2 amount that would otherwise be deter-  
3 mined for such items under section  
4 1834(a), section 1834(h), or section  
5 1842(s)(1) on January 1, 2015, updated  
6 by the covered item update for such items  
7 under section 1834(a)(14)(L), section  
8 1834(h), or section 1842(s)(1), respec-  
9 tively, as appropriate for the year with re-  
10 spect to which the bid ceiling is established  
11 for such applicable covered item.

12 “(ii) APPLICATION TO NEW COVERED  
13 ITEMS.—The Secretary shall establish a  
14 process for purposes of applying clause (i)  
15 with respect to applicable covered items for  
16 which no fee schedule amount would other-  
17 wise be paid under section 1834(a), section  
18 1834(h), or section 1842(s), as appro-  
19 priate, on January 1, 2015.

20 “(iii) APPLICABLE COVERED ITEMS  
21 DEFINED.—For purposes of this subpara-  
22 graph, the term ‘applicable covered items’  
23 means competitively priced items and serv-  
24 ices described in subsection (a)(2) that are  
25 furnished with respect to rounds of com-

1                   petition that begin on or after January 1,  
2                   2017.”.

3 **SEC. 4. REQUIREMENTS IN DETERMINING ADJUSTMENTS**  
4                   **USING INFORMATION FROM COMPETITIVE**  
5                   **BIDDING PROGRAMS.**

6           Section 1834(a)(1)(G) of the Social Security Act (42  
7 U.S.C. 1395m(a)(1)(G)) is amended by adding at the end  
8 the following new sentence: “In the case of items and serv-  
9 ices furnished on or after January 1, 2019, in making any  
10 adjustments under clause (ii) or (iii) of subparagraph (F),  
11 the Secretary shall—

12                   “(i) solicit and take into account  
13                   stakeholder input; and

14                   “(ii) take into account the highest  
15                   amount bid by a winning supplier in a  
16                   competitive acquisition area and a com-  
17                   parison of each of the following with re-  
18                   spect non-competitive acquisition areas and  
19                   competitive acquisition areas:

20                   “(I) The average travel distance  
21                   and cost associated with furnishing  
22                   items and services in the area.

23                   “(II) Any barriers to access for  
24                   items and services in the area.

1                   “(III) The average delivery time  
2                   in furnishing items and services in the  
3                   area.

4                   “(IV) The average volume of  
5                   items and services furnished by sup-  
6                   pliers in the area.

7                   “(V) The number of suppliers in  
8                   the area.”.

9 **SEC. 5. MONTHLY REPORT ON THE RESULTS OF THE MONI-**  
10 **TORING OF ACCESS OF MEDICARE BENE-**  
11 **FICIARIES TO DURABLE MEDICAL EQUIP-**  
12 **MENT AND OF HEALTH OUTCOMES.**

13           Not later than the first of each month (beginning  
14 with May 1, 2016, and ending with September 1, 2017),  
15 the Secretary of Health and Human Services shall publish  
16 on the Internet website of the Centers for Medicare &  
17 Medicaid Services the results of the monitoring of access  
18 of Medicare beneficiaries to durable medical equipment  
19 and of health outcomes, as described on page 66228 in  
20 the final rule published by the Center for Medicare & Med-  
21 icaid Services on November 6, 2014, and entitled “Medi-  
22 care Program; End-Stage Renal Disease Prospective Pay-  
23 ment System, Quality Incentive Program, and Durable  
24 Medical Equipment, Prosthetics, Orthotics, and Supplies”  
25 (79 Fed. Reg. 66120–66265).

1 **SEC. 6. REVISION OF EFFECTIVE DATE OF PROVISION LIM-**  
2 **ITING FEDERAL MEDICAID REIMBURSEMENT**  
3 **TO STATES FOR DURABLE MEDICAL EQUIP-**  
4 **MENT (DME) TO MEDICARE PAYMENT RATES.**

5 (a) **IN GENERAL.**—Section 1903(i)(27) of the Social  
6 Security Act (42 U.S.C. 1396b(i)(27)) is amended by  
7 striking “January 1, 2019” and inserting “October 1,  
8 2018”.

9 (b) **EFFECTIVE DATE.**—The amendment made by  
10 subsection (a) shall take effect as if included in the enact-  
11 ment of section 503 of division O of Public Law 114–113.

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