

109TH CONGRESS  
2D SESSION

# S. 3920

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

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2006

Mr. HATCH (for himself and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 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 “Medicare Durable  
5 Medical Equipment Access Act of 2005”.

6 **SEC. 2. BENEFICIARY PROTECTIONS.**

7 (a) APPLICATION OF QUALITY STANDARDS.—Section  
8 1847(b)(2)(B) of the Social Security Act (42 U.S.C.  
9 1395w–3(b)(2)(B)) is amended to read as follows:

1           “(B) APPLICATION OF QUALITY STAND-  
2           ARDS AND RECEIPT OF ADVICE FROM OVER-  
3           SIGHT COMMITTEE.—The Secretary may not  
4           award any contracts under the competitive ac-  
5           quisition program under this section unless—

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

9                   “(ii) the Secretary has received advice  
10                  from the program oversight committee es-  
11                  tablished under subsection (c).”.

12          (b) REQUIRING USE OF EXEMPTIONS.—Section  
13 1847(a)(3) of such Act (42 U.S.C. 1395w–3(a)(3)) is  
14 amended by striking “may exempt” and inserting “shall  
15 exempt”.

16          (c) EXEMPTION OF SMALLER MSAs.—Section  
17 1847(a)(3)(A) of such Act (42 U.S.C. 1395w–3(a)(3)(A))  
18 is amended by inserting “(including any metropolitan sta-  
19 tistical area with a population of less than 500,000)” after  
20 “rural areas”.

21          (d) APPLICATION OF FEDERAL ADVISORY COM-  
22 MITTEE ACT (FACA) TO PROGRAM ADVISORY AND OVER-  
23 SIGHT COMMITTEE (PAOC).—Section 1847(c)(4) of such  
24 Act (42 U.S.C. 1395w–3(c)(4)) is amended to read as fol-  
25 lows:

1           “(4) APPLICABILITY OF FACa.—The provisions  
2           of the Federal Advisory Committee Act (5 U.S.C.  
3           App.) shall apply to the Committee.”.

4           (e) EFFECTIVE DATE.—The amendments made by  
5           this section shall be effective as if included in the enact-  
6           ment of the Medicare Prescription Drug, Improvement,  
7           and Modernization Act of 2003 (Public Law 108–173).

8           **SEC. 3. SMALL SUPPLIER PROTECTIONS.**

9           (a) QUALIFIED SUPPLIER PARTICIPATION.—Section  
10          1847(b) of the Social Security Act (42 U.S.C. 1395w–  
11          3(b)) is amended—

12           (1) in paragraph (4)(A), by striking “The Sec-  
13           retary may limit” and inserting “Subject to para-  
14           graph (6)(D), the Secretary may limit”; and

15           (2) in paragraph (6)(D), by adding at the end  
16           the following: “Such appropriate steps shall include  
17           permitting suppliers that are classified as small busi-  
18           nesses under the Small Business Act to continue to  
19           participate as suppliers at the selected award price  
20           so long as they submit bids at less than the fee  
21           schedule amount otherwise applicable to the items  
22           and they otherwise comply with applicable program  
23           requirements.”.

1 (b) RESTORATION OF DUE PROCESS.—Section  
2 1847(b)(10) of such Act (42 U.S.C. 1395w-3(b)(10)) is  
3 amended—

4 (1) by striking “NO ADMINISTRATIVE OR JUDI-  
5 CIAL REVIEW” and inserting “RESTORATION OF AP-  
6 PEAL RIGHTS”; and

7 (2) by striking “There shall be no administra-  
8 tive or judicial review under section 1869, section  
9 1878, or otherwise of” and inserting “Administra-  
10 tive and judicial review shall only be available under  
11 section 1869 (and not otherwise) of”.

12 (c) APPLICATION OF REQUIREMENT FOR SIGNIFI-  
13 CANT SAVINGS.—Section 1847(a) of such Act (42 U.S.C.  
14 1395w-3(a)) is amended—

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

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

19 “(D) REQUIREMENT FOR SIGNIFICANT  
20 SAVINGS.—The Secretary shall not implement a  
21 program under this section with respect to an  
22 item or service unless the Secretary dem-  
23 onstrates a probability of achieving significant  
24 savings of at least 10 percent, compared to the

1 fee schedule in effect on January 1, 2006, by  
2 including the item or service in the program.”.

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

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

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

9 “(G) REQUIREMENT FOR COMPARABILITY  
10 ANALYSIS BEFORE IMPLEMENTATION.—The  
11 Secretary may not implement subparagraph (F)  
12 with respect to the application of rates in an  
13 area that is not a competitive acquisition area  
14 under section 1847 unless the Secretary has  
15 completed and published in the Federal Reg-  
16 ister a comparability analysis to ensure the ap-  
17 plication is appropriate. The comparability  
18 analysis shall include at least an analysis of the  
19 relative costs of providing the particular items  
20 and services in the respective metropolitan sta-  
21 tistical areas and an assessment of whether ap-  
22 plication of the bid rate in an area that is not  
23 a competitive acquisition area would adversely  
24 impact beneficiary access to quality items and  
25 services.

1           “(H) APPLICATION OF COMPARABILITY  
2 ANALYSIS REQUIREMENT TO CERTAIN OTHER  
3 PART B ITEMS AND SERVICES.—Subparagraph  
4 (G) shall also apply to the implementation of  
5 section 1847(a) with respect to items described  
6 in paragraph (2)(B) or (2)(C) of such section  
7 that are furnished on or after January 1,  
8 2009.”.

9           (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall be effective as if included in the enact-  
11 ment of the Medicare Prescription Drug, Improvement,  
12 and Modernization Act of 2003 (Public Law 108–173).

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