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American Taxpayer Relief Act of 2012 (Engrossed Amendment Senate - EAS)

SEC. 636. MEDICARE PAYMENT OF COMPETITIVE PRICES FOR DIABETIC SUPPLIES AND ELIMINATION OF OVERPAYMENT FOR DIABETIC SUPPLIES.

(a) Application of Competitive Bidding Prices for Diabetic Supplies- Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended--

(1) in subparagraph (F), in the matter preceding clause (i), by striking `subparagraph (G)' and inserting `subparagraphs (G) and (H)'; and

(2) by adding at the end the following new subparagraph:

`(H) DIABETIC SUPPLIES-

`(i) IN GENERAL- On or after the date described in clause (ii), the payment amount under this part for diabetic supplies, including testing strips, that are non-mail order items (as defined by the Secretary) shall be equal to the single payment amounts established under the national mail order competition for diabetic supplies under section 1847.

`(ii) DATE DESCRIBED- The date described in this clause is the date of the implementation of the single payment amounts under the national mail order competition for diabetic supplies under section 1847.'.

(b) Overpayment Elimination for Diabetic Supplies- Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

`(22) SPECIAL PAYMENT RULE FOR DIABETIC SUPPLIES- Notwithstanding the preceding provisions of this subsection, for purposes of determining the payment amount under this subsection for diabetic supplies furnished on or after the first day of the calendar quarter during 2013 that is at least 30 days after the date of the enactment of this paragraph and before the date described in paragraph (1)(H)(ii), the Secretary shall recalculate and apply the covered item update under paragraph (14) as if subparagraph (J)(i) of such paragraph was amended by striking `but only if furnished through mail order'.'.

Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1))

(F) APPLICATION OF COMPETITIVE ACQUISITION; LIMITATION OF INHERENT REASONABLENESS AUTHORITY.—In the case of covered items furnished on or after January 1, 2011, subject to

subparagraph (G) 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;^[188]

(ii) the Secretary may (and, in the case of covered items furnished on or after January 1, 2016, subject to clause (iii). shall)^[189] 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^[190]

(iii)^[191] in the case of covered items furnished on or after January 1, 2016, the Secretary shall continue to make such adjustments described in clause (ii) as, under such competitive acquisition programs, additional covered items are phased in or information is updated as contracts under section [1847\(b\)\(3\)\(B\)](#).

(G) USE OF INFORMATION ON COMPETITIVE BID RATES.— The Secretary shall specify by regulation the methodology to be used in applying the provisions of subparagraph (F)(ii) and subsection (h)(1)(H)(ii). In promulgating such regulation, the Secretary shall consider the costs of items and services in areas in which such provisions would be applied compared to the payment rates for such items and services in competitive acquisition areas.

(14) COVERED ITEM UPDATE.—In this subsection, the term “covered item update” means, with respect to a year—

(J) for 2009—

(i) in the case of items and services furnished in any geographic area, if such items or services were selected for competitive acquisition in any area under the competitive acquisition program under section [1847\(a\)\(1\)\(B\)\(i\)\(I\)](#) before July 1, 2008, including related accessories but only if furnished with such items and services selected for such competition and diabetic supplies but only if furnished through mail order, - 9.5 percent; or

SEC. 638. REMOVING OBSTACLES TO COLLECTION OF OVERPAYMENTS.

(a) In General- The last sentence of subsections (b) and (c) of section 1870 of the Social Security Act (42 U.S.C. 1395gg) are each amended--

(1) by striking `third year' and inserting `fifth year'; and

(2) by striking `three-year' and inserting `five-year'.

(b) Effective Date- The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1870. [42 U.S.C. 1395gg]

OVERPAYMENT ON BEHALF OF INDIVIDUALS AND SETTLEMENT OF CLAIMS FOR BENEFITS ON BEHALF OF DECEASED INDIVIDUALS

SEC. 1870. [42 U.S.C. 1395gg] (a) Any payment under this title to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Where—

(1) more than the correct amount is paid under this title to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section [1814\(e\)](#) to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under title II of this Act or under the Railroad Retirement Act of 1974^[707], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under title II of this Act or under the Railroad Retirement Act of 1974, as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under title II of such Act.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section [1817\(g\)](#), and section [1841\(f\)](#), shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the Secretary's determination that more than such correct amount was paid was made **subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid**; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.

(c) There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section [1814\(e\)](#)) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4), if such adjustment (or recovery) would defeat the purposes of title II or title XVIII or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this title) against an individual who is without fault shall be

deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this title by reason of the provisions of paragraph (1) or (9) of section [1862\(a\)](#) and (B) if the Secretary's determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.