

Medicare DMEPOS Competitive Acquisition Reform Act of 2008
Introduced by Reps. Stark, Camp, Rangel, Boehner, Dingell, Pallone and others

Summary

The Medicare DMEPOS Competitive Acquisition Reform Act of 2008 delays implementation of the Medicare durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) competitive bidding program. It would also make improvements to the bidding process, establish quality measures for DME suppliers in Medicare, and make additional changes to the program. The cost of the delay would be offset by a reduction in current DMEPOS payment rates.

Background

Durable Medical Equipment (DME) has historically been paid using a fee schedule. The Balanced Budget Act of 1997 established a demonstration program to test competitive bidding as a new way to set payment for DMEPOS. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 went further, requiring CMS to implement competitive bidding nationally for the following selected categories of items and services: oxygen supplies and equipment; standard power wheelchairs and scooters; complex rehabilitative wheelchairs; mail-order diabetic supplies; enteral nutrients and equipment; continuous positive airway pressure (CPAP) devices and Respiratory Assist Devices (RADs); hospital beds; negative pressure wound therapy devices; walkers; and support surfaces, including mattresses. Under the program, suppliers bid to provide items for one or more of the categories in a geographic area. Those whose bids are awarded are then permitted to supply the selected items to beneficiaries; organizations that are not awarded bids are precluded from providing Medicare beneficiaries with DMEPOS items targeted for bidding in the bidding area. Unless this or other legislation is enacted to delay the program, Round 1, which affects 10 metropolitan statistical areas is slated to start on July 1. The agency is required to begin implementation of Round 2, which will affect 70 communities, in 2009, although CMS has not released the exact schedule. After Round 2 is completed, competitive bidding may be expanded across the country and prices may be adjusted in non-bid areas using information from the bidding program.

Legislation

Temporary Delay Rounds 1 & 2

- Terminate contracts awarded under Round 1 and restart the contracting process in those areas in 2009.
- Round 2 contracting process would begin in 2011.
- Payment adjustments for DMEPOS in non-competitive bid areas may not take effect until Round 2 is completed.

Offset

- In January 2009, eliminate the annual inflationary adjustment for all items covered by Round 1 of the competitive bidding program and reduce payment rates for those items by 9.5 percent nationwide. This policy does not affect diabetic supplies furnished by retail suppliers because they were not covered by the bidding program.

- Items that had been subject to the reduction would receive a 2 percent payment increase in 2014, except in any area where a competitive bidding contract is in effect or CMS has otherwise adjusted payment rates.

Bidding Process Improvements

- Require CMS to notify bidders about paperwork discrepancies and give suppliers the opportunity to correct within a reasonable time frame.
- Provide CMS the authority to subdivide MSAs with more than 8 million people.
- Exempt rural areas and MSAs with a population of less than 250,000 from competitive bidding for at least five years.
- Require that suppliers who bid on diabetic testing supplies offer brands that cover at least 50% of the market by volume (does not apply to Round 1).
- Before using its authority to adjust prices in non-bid areas, CMS must issue a regulation and consider how prices set through competitive bidding compare to costs for such items in non-bid areas.
- Require HHS's Office of Inspector General to verify calculations used to determine the pivotal bid amount and winning bid amounts.

Quality Measures

- Require all suppliers to be accredited by October 1, 2009. Ensure that all suppliers, whether they are billing Medicare directly or are a subcontractor to another supplier, be subject to accreditation.
- Require contracting suppliers to disclose all subcontracting relationships to CMS.
- Exclude physicians and other practitioners from DMEPOS accreditation requirements until CMS develops provider-specific standards. Allow CMS to waive physician accreditation if the agency determines they are subject other mandatory quality requirements.
- Establish a separate ombudsman within CMS to handle supplier and beneficiary issues related to the competitive bidding program.

Other Changes

- Exclude complex rehabilitation wheelchairs, and related accessories when furnished with such wheelchairs, from competitive bidding.
- Exclude negative pressure wound therapy from Round 1 and require CMS to evaluate how these items are coded and paid.
- Exclude Puerto Rico from Round 1 re-bidding (did not receive enough valid bids in original Round 1 for CMS to award any contracts).
- Allow physicians and other treating practitioners to supply "off-the-shelf orthotics" to their patients without being awarded competitive bidding contract.
- Allow hospitals in bidding areas to supply the same DMEPOS items that physicians and other practitioners will be able to supply (those that are considered an integral part of professional services) without being awarded contracts for those items.
- Ensure that podiatrists and other similar practitioners can prescribe DMEPOS items by using broader definition of physician in Social Security Act. (This

relates to a drafting error in MMA that pointed to the wrong definition of physician in the Social Security Act when requiring face-to-face examination in order to prescribe DMEPOS items.)

- Delay mandated GAO report to coincide with delay to Round 1 and expand scope of report.
- Provides CMS implementation funding of \$120 million.