

# PUBLICATION

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## Chance to Comment on Future of DMEPOS Payments [Ober|Kaler]

March 20, 2014

CMS recently took the unusual step of issuing an Advance Notice of Proposed Rulemaking (ANPR) [PDF] regarding changes to Medicare payment methodologies for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) items. CMS is required by the Affordable Care Act to either expand the Competitive Bidding Program or use information from competitive bidding to adjust payment amounts for DMEPOS items furnished in areas that are not currently competitive bidding areas. In addition, CMS is considering changing payment methodologies for certain DME and enteral nutrition in competitive bidding areas. Given the acrimony that has been associated with the implementation of competitive bidding to date, CMS is inviting public comment before it undertakes formal notice-and-comment rulemaking. Comments are due by March 28, 2014.

### I. Using Competitive Bidding Information to Adjust Medicare Payment Amounts for DMEPOS Items and Services in Non-Competitive Bidding Areas

Traditionally, Medicare has paid for most DMEPOS pursuant to the fee schedule methodologies established by statute at 42 U.S.C. §§ 1834 and 1842. In an effort to reduce Medicare spending on DMEPOS, Congress established a Competitive Bidding Program that applies to certain DMEPOS items in certain regions of the country. Under the Competitive Bidding Program, suppliers must go through a bidding process. CMS establishes payment amounts in competitive bidding areas (CBAs) based on the amounts that suppliers bid. CMS selects a limited number of contract suppliers for each category of DMEPOS in each of the current 109 CBAs. Only the contract suppliers are permitted to submit claims to Medicare.

By 2016, CMS must either expand the Competitive Bidding Programs or use competitive bidding pricing information to set fee schedule amounts in all non-CBA regions of the country. The methodology for adjusting current fee schedule amounts using competitive bidding information must be established through notice-and-comment rulemaking. Accordingly, CMS seeks comments regarding adjustments to payment amounts for DMEPOS items and services furnished in areas that are not included in the existing Competitive Bidding Program. The ANPR includes a series of specific questions on which CMS would like suppliers and the public to comment. Of particular note, CMS seeks comment on (1) whether the costs of furnishing DMEPOS items and services vary based on the geographic areas, or size and demographics of the markets, in which they are furnished; and (2) how the adjustments should be handled for items and services that have not been included in all Competitive Bidding Programs.

### II. Changing the Payment Methodologies and Rules for DME and Enteral Nutrition Furnished Under the Competitive Bidding Program

CMS is also considering changes to the payment rules for certain DME and enteral nutrients currently furnished under the Competitive Bidding Program. The basic system by which DME items are classified and divided for payment purposes has been in place for decades. Depending on how an item is classified, Medicare pays (i) on a continuous, uncapped, monthly rental basis, for as long as medical necessity and Part B coverage continues, (ii) on a capped rental basis, through which beneficiaries take ownership of the equipment after 13 months of continuous rent, or (iii) on a purchase basis for certain items. In addition to the

payment for the underlying equipment, the current rules permit separate payment for various supplies and accessories as well as payments for repairs of equipment owned by beneficiaries.

In the hopes of simplifying the reimbursement of DME, CMS is seeking comment on a number of questions related to the possibility of bundling payments for all the equipment itself as well as all accessories and services related to furnishing a particular item of DME and enteral nutrition. CMS would use the competitive bidding process to seek bids from suppliers that would reflect the monthly costs of all related items and services, including the supplies, accessories, and maintenance and service costs associated with furnishing a particular item of DME or enteral nutrition. The supplier bids would then be used to set a monthly payment for those items and services. Suppliers would retain title to the equipment, and beneficiaries would be free to switch suppliers on a monthly basis. CMS contends that such a change would incentivize suppliers to furnish more dependable equipment to reduce the number of service calls they make, because when beneficiaries rent the equipment, the supplier is responsible for servicing the equipment at no additional cost.

In the ANPR, CMS seeks comments in several areas, including: (1) whether the capped rental payments and lump sum purchase rules are still necessary; (2) why beneficiaries might need to own DME or enteral nutrition equipment instead of renting it; and (3) what would be the advantages and disadvantages for beneficiaries and suppliers of bundled bidding and payments, and what negative impacts may arise from the use of continuous bundled monthly payments.

## **Ober|Kaler's Comments**

DMEPOS suppliers should carefully consider taking the opportunity presented by CMS to comment on the future of DMEPOS reimbursement. CMS is asking a number of important questions that may influence how DMEPOS suppliers are reimbursed in the future. Now is the time for DMEPOS suppliers to participate. Past experience shows that changes between proposed and final rules are typically incremental and not fundamental. Given pressure from the DMEPOS industry and Congress, CMS invites public comments before developing detailed changes in the payment methodologies in existing competitive bidding areas as well as areas that are currently not part of the Competitive Bidding Program.