

CMS proposes DMEPOS price changes based on competitive bid rates

By Mark Higley

On July 2, 2014, CMS issued proposed rule CMS-1614-P “*Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies*”, which includes proposed changes and adjustments to DMEPOS pricing and certain payment policies. The rule also proposes to update and make revisions to the End-Stage Renal Disease (ESRD) prospective payment system, and to clarify the statutory Medicare hearing aid coverage exclusion.

The Affordable Care Act amended the Medicare Modernization Act statute to mandate use of information from the DMEPOS competitive bidding program to adjust the fee schedule amounts for DME in areas where competitive bidding programs are not implemented by no later than January 1, 2016. CMS estimates that by applying bid rates throughout the entire United States it would save over \$7 billion over FY 2016 through 2020.

VGM is reviewing the proposed rule and will submit comments applicable to the DMEPOS provisions.

Major DMEPOS provisions within CMS-1614 include:

1). Proposed (changes to) the methodology for making national price adjustments based upon information gathered from the DMEPOS Competitive Bidding Program (CBP).

This rule proposes methodologies to implement the use of information from the DMEPOS CBP to adjust the fee schedule amounts for DME in areas where competitive bidding programs (CBPs) are not implemented. The major provisions in this proposal are:

- Adjust fee schedule amounts for states in different regions of the country based on competitive bidding pricing from competitions in these regions. The regional prices would be limited by a national ceiling (110% of the average of regional prices) and floor (90% of the average of regional prices).

- CMS determines a regional price for each state equal to the un-weighted average of the single payment amount for an item or service from the CBAs that are fully or partially located in the same region where the state is located.
- CMS determines a national average price equal to the average of the regional prices.
- The regional price cannot be greater than 110 percent of the national average nor less than 90 percent of the national average price.
- The adjusted fee schedule amounts will be increased on an annual basis using the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U).
- The adjusted fee schedule amounts would continue to be updated every 12 months.
- The adjusted fee schedule amounts are revised each time a SPA for an item or service is updated following one or more new competitions and as other items are added to programs.
- Use national ceiling as adjusted fee for states that are predominantly rural or sparsely populated (frontier states)
 - A regional price for a state designated as a rural or frontier state is 110 percent of the national average price.
- Adjust fee schedule amounts for non-contiguous areas based on the average of competitive bidding pricing from these areas or the national ceiling, whichever is higher.
 - Payment adjustments for areas outside the contiguous United States are adjusted based on the greater of the average of the single payment amounts for CBAs outside the contiguous United States (e.g. Honolulu, HI) or 110 percent of the national average price.
 - Payment adjustments for items and services included in the Round 1 recompetes (9 CBAs) the fee schedule amounts applied for all areas within and outside the contiguous United

States are adjusted based on 110 percent of the un-weighted average of the single payment amounts for the item or service.

2). Propose phase in of special payment rules in a limited number of areas under the CBP for certain DME and enteral nutrition.

This rule proposes a limited phase in of bundled monthly payment amounts for the equipment, supplies, accessories and any necessary maintenance and repairs for enteral nutrition, oxygen and oxygen equipment, standard manual wheelchairs, standard power wheelchairs, hospital beds, continuous positive airway pressure devices and respiratory assist devices furnished under the CBP in place of capped rental policies. Extending the use of these payment rules to additional competitive bidding areas and/or items would be addressed through future notice and comment rulemaking.

- In no more than 12 CBAs, in conjunction with competitions that begin on or after January 1, 2015, payment is made on a bundled, continuous monthly rental basis for enteral nutrients, supplies and equipment, oxygen and oxygen equipment, standard manual wheelchairs, standard power wheelchairs, CPAP and respiratory assist devices, and Hospital beds.
- The single payment amounts are established based on bids submitted and accepted for furnishing rented DME and enteral nutrition on a monthly basis for each month of medical need during the contract period monthly single payment amount would include payment for all nutrients, supplies and equipment.
- Payment is made on a continuous monthly rental basis for DME. The single payment amount for the monthly rental of DME includes payment for the rented equipment, maintenance and servicing of the rented equipment, and replacement of supplies and accessories necessary for the effective use of the rented equipment. Separate payment for replacement of equipment, repair or maintenance and servicing of equipment, or for replacement of accessories and supplies necessary for the effective use of equipment is not allowed under any circumstances.
- Payment is made on a monthly basis for enteral nutrition. The single payment amount includes payment for all nutrients, supplies and equipment. Separate payment for replacement of equipment, repair or maintenance and servicing of equipment, or for replacement of accessories and supplies necessary for the effective use of equipment is not allowed under any circumstances.

- Payment for grandfathered DME items paid on a bundled, continuous rental basis. Payment to a supplier that elects to be a grandfathered supplier of DME furnished in CBPs where these special payment rules apply is made in accordance with § 414.408(a)(1). (See <http://www.law.cornell.edu/cfr/text/42/414.408>)
- Supplier transitions for DME and enteral nutrition paid on a bundled, continuous rental basis. Changes from a non-contract supplier to a contract supplier at the beginning of a CBP where payment is made on a bundled, continuous monthly rental basis results in the contract supplier taking on responsibility for meeting all of the monthly needs for furnishing the covered DME or enteral nutrition. In the event that a beneficiary relocates from a CBA where these special payment rules apply to an area where rental cap rules apply, a new period of continuous use begins for the capped rental item, enteral nutrition equipment, or oxygen equipment as long as the item is determined to be medically necessary.
- Responsibility for repair and maintenance and servicing of power wheelchairs. In no more than 12 CBAs where payment for power wheelchairs is made on a capped rental basis, for power wheelchairs furnished in conjunction with competitions that begin on or after January 1, 2015, contract suppliers that furnish power wheelchairs under contracts awarded based on these competitions shall continue to repair power wheelchairs they furnish following transfer of title to the equipment to the beneficiary. The responsibility of the contract supplier to repair, maintain and service beneficiary-owned power wheelchairs does not apply to power wheelchairs that the contract supplier did not furnish to the beneficiary. For power wheelchairs that the contract supplier furnishes during the contract period, the responsibility of the contract supplier to repair, maintain and service the power wheelchair once it is owned by the beneficiary continues until the reasonable useful lifetime of the equipment expires, coverage for the power wheelchair ends, or the beneficiary relocates outside the CBA where the item was furnished. The contract supplier may not charge the beneficiary or the program for any necessary repairs or maintenance and servicing of a beneficiary-owned power wheelchair it furnished during the contract period.

3). Update the definition of minimal self-adjustment of orthotics at 42 CFR §414.402

This rule proposes to update the regulation to reflect program guidance on what specialized training is needed to provide custom fitting services if providers are not certified orthotists.

4). Change of Ownership Rules to Allow Contract Suppliers to Sell Specific Lines of Business

Current rules prohibit the sale of a competitive bidding contract. However, CMS may permit the transfer of a contract to an entity that merges with or acquires a competitive bidding contract supplier if the new owner assumes all rights, obligations, and liabilities of the competitive bidding contract. This proposed rule would establish an exception to the prohibition against subdividing a contract that would allow a contract supplier to sell a distinct company (e.g., an affiliate or subsidiary) which furnishes a specific product category (PC) or a specific competitive bidding area (CBA). Under this exception, CMS would sever the CBAs and PCs that the company serves, along with that company's location(s), from the original contract; incorporate those CBAs, PCs, and locations into a new contract; and transfer the contract to a new owner under specific circumstances. This change to the regulation would apply to all current and future rounds.

VGM will offer additional analysis and commentary upon further review of the proposed rule.

[To access CMS-1614-P \(DMEPOS sections only\) click here](#)