



Medicare Part B Drug Competitive Acquisition Program (CAP) Postponed for 2009 – JA0833

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Implementation Date: N/A

Note: Special Edition (SE) article SE0833 was revised to reflect that the CAP for 2009 is postponed and to explain the impact of that postponement.

Key Words

SE0833, CAP, Drug, Competitive, Acquisition

Contractors Affected

- Medicare Carriers
- Part A/B Medicare Administrative Contractors
- CAP Designated Carriers

Provider Types Affected

Physicians who participated in the 2008 Medicare CAP for Part B drugs and biologicals



- The Centers for Medicare & Medicaid Services (CMS) has postponed the CAP for 2009.
- The contract with the current Approved CAP Vendor (BioScrip Inc.) expired on December 31, 2008.
- The physician election period for 2009 that was scheduled for October 1 to November 15, 2008, will not be held.

Provider Needs to Know...

- Physicians who participated in the CAP must transition back into the Average Sales Price (ASP) method of acquiring Part B drugs for services provided on or after January 1, 2009.
- Claims processing for the CAP will continue past January 1, 2009, for claims with dates of service through December 31, 2008. Participating CAP physicians must submit their drug administration claims by January 30, 2009.

CAP Is Postponed for 2009

- In 2008, CMS accepted bids for vendor contracts for the 2009 -2011 CAP.
- While CMS received several qualified bids, contractual issues with the successful bidders resulted in CMS postponing the program as of January 1, 2009.
- As a result, CAP drugs will not be available from an Approved CAP Vendor for dates of service after December 31, 2008.

Drug Ordering

- The contract with the current Approved CAP Vendor (BioScrip Inc.) will remain in effect for dates of service through December 31, 2008.
- **Participating CAP physicians must continue to obtain CAP drugs from the Approved CAP Vendor if the drugs are to be administered on or before December 31, 2008.**
- **Beginning January 1, 2009**, physicians must obtain and bill for drugs through the ASP process, and physicians will be responsible for collecting applicable deductible and co-insurance from Medicare beneficiaries.
- Unused CAP drugs that remain at a physician's office belong to the Approved CAP Vendor. They must be returned to the Approved CAP Vendor, if permissible by state law by February 28, 2009, or purchased from the Approved CAP Vendor for administration under the ASP methodology for dates of service after January 1, 2009.
- Unused CAP drugs cannot be given away to a physician. **Physicians will be liable for the cost of these drugs if they are not returned by February 28, 2009.**
- Participating CAP physicians should contact the Approved CAP Vendor as early as possible to determine whether buying or returning unused drugs is preferable and take steps to minimize the amount of unused drugs at their offices. Contact information for the Approved CAP Vendor is available at <http://www.bioscrip.com/> on the Internet.

Emergency Restocking

- When permitted under the emergency restocking provision, participating CAP physicians may submit a prescription order for a CAP drug to replace what they used from their own stock. During the transition, participating CAP physicians may request replacement drugs ONLY if the date of service is on or before December 31, 2008, **AND** the corresponding drug administration claim is submitted on or before January 30, 2009. Physicians must request replacement drugs by January 30, 2009.
 - If a participating CAP physician administers a drug from office stock on or before December 31, 2008, and does not submit a prescription order and a request for replacement drugs, the physician will not be able to bill Medicare under the ASP system for the administered drug.
 - The Approved CAP Vendor will not send replacement products under the CAP emergency restocking provision (J2 modifier claims) after February 28, 2009.
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Claims Processing and Billing

- Participating CAP physicians must submit CAP claims to their local carrier or A/B MAC within 30 days of CAP drug administration.
- All CAP drug claims with dates of service through December 31, 2008, must be submitted on or before January 30, 2009. **Any CAP claims with dates of service after December 31, 2008 will be denied.**
- Drugs acquired through ASP for administration on or after January 1, 2009, must be billed to the local carrier/MAC. Physicians should not use any of the CAP modifiers (J1, J2, J3, M2) in these claims.
- Beneficiaries whose physicians participated in the CAP received separate Medicare Summary Notices (MSNs) from the CAP designated carrier, Noridian Administrative Services (NAS), and the local carrier/MAC that processed the beneficiary's claims. In 2009, beneficiaries will only receive MSNs from the CAP designated carrier if the corresponding claims for their Medicare drugs were from dates of service on or before December 31, 2008.

Post-payment Review

- The purpose of the CAP post-payment review process is to verify the administration of a CAP drug or biological in order to assure that CAP drug payments are being made appropriately.
- Participating CAP physicians may receive requests from the CAP designated carrier, NAS, for documentation about specific claims to support the CAP post-payment review process.
- In 2009, this process will continue for claims with dates of service on or before December 31, 2008. NAS will continue to send post-payment letters to physicians, and physicians must submit requested documentation within 30 days.

CAP Training During the Transition

- CMS will provide guidance and training for participating CAP physicians on how to transition out of the program. This information will be posted at http://www.cms.hhs.gov/CompetitiveAcquisforBios/02_infophys.asp on the CMS CAP 'Information for Physicians' website.
 - Announcements will also be sent via the dedicated CAP listserv and the Medicare physicians listserv. Listserv registration is available at <https://list.nih.gov/> on the Internet. Providers can search that website for CMS-CAP-PHYSICIANS-L and PHYSICIANS-L in order to subscribe to the listserv.
 - CMS is also seeking feedback on the CAP from current and former participating CAP physicians, as well as other parties. CMS is interested in hearing from the public about a range of issues, including, but not limited to, the categories of drugs provided under the CAP, the distribution of areas that are served by the CAP, and procedural changes that may increase the program's flexibility and appeal to potential vendors and physicians. Information about how to submit comments is at <http://www.cms.hhs.gov/CompetitiveAcquisforBios/> on the CMS website.
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Background

The CAP is authorized by Section 303(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which requires the implementation of a CAP for Medicare Part B drugs and biologicals not paid on a cost or prospective payment system basis. Section 303(d) of the MMA can be viewed at <http://www.cms.hhs.gov/CompetitiveAcquisforBios/Downloads/303d.pdf> on the CMS website.

Operational Impact

N/A

Reference Materials

- The related MLN Matters article can be found at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0833.pdf> on the CMS website.
- For original overview information on the CAP, providers should review Change Request (CR) 4064 at <http://www.cms.hhs.gov/Transmittals/downloads/R777CP.pdf> and its related MLN Matters article at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4064.pdf> on the CMS website.
- For original background information on the CAP, providers should review CR4309 at <http://www.cms.hhs.gov/transmittals/downloads/R866CP.pdf> and its related MLN Matters article at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4309.pdf> on the CMS website.
- For the original background information on the CAP physician election process, providers should review CR4404 at <http://www.cms.hhs.gov/transmittals/downloads/R932CP.pdf> and its related MLN Matters article at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4404.pdf> on the CMS website.
- For background information on the CAP post-payment review process, providers should review CR5546 at <http://www.cms.hhs.gov/Transmittals/downloads/R1207CP.pdf> and its related MLN Matters article at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5546.pdf> on the CMS website.
- Further information about the CAP is available at <http://www.cms.hhs.gov/CompetitiveAcquisforBios/> on the CMS CAP website.
- Additional information about the Approved CAP Vendor is available on their website at <http://www.bioscrip.com/> and at http://www.cms.hhs.gov/CompetitiveAcquisforBios/15_Approved_Vendor.asp on the CMS CAP website. Additional information about the CAP designated carrier is available at http://www.noridianmedicare.com/cap_drug on their website.