

BACKGROUND

COMPETITIVE ACQUISITION PROGRAM FOR CERTAIN DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, AND SUPPLIES (DMEPOS) AND OTHER ISSUES PROPOSED RULE (CMS 1270-P)

Overview

Providers and suppliers that furnish certain durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) to Medicare beneficiaries under Medicare Part B will have an opportunity to participate in a competitive acquisition program (the “Medicare DMEPOS Competitive Bidding Program”). This program will improve the effectiveness of Medicare’s payments for certain DMEPOS, reduce beneficiary out-of-pocket expenses, and save the Medicare program money while ensuring beneficiary access to quality DMEPOS items and services. Today the Centers for Medicare & Medicaid Services (CMS) issued a rule describing the proposed methodologies for selecting the areas in which the program will be first implemented and the items to be included in the program and for determining payments under the program, among other provisions. This fact sheet identifies some key elements but please refer to the proposed rule for a full discussion of the issues involved.

Legislative Background

Section 302(b) (1) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) requires the Secretary to establish and implement the Medicare DMEPOS Competitive Bidding Program. This program will change the way that Medicare pays for DMEPOS under Part B of the Medicare program by utilizing bids submitted by DMEPOS suppliers to establish Medicare payment amounts.

The MMA requires that competitive bidding programs be established and implemented in areas throughout the United States but provides the Secretary with the authority to phase in competitive bidding programs. Competition under the program would be phased in beginning in 2007 in 10 of the largest metropolitan statistical areas (MSAs), in 80 of the largest MSAs in 2009, and in other areas after 2009. Areas that may be exempt from competitive acquisition of DMEPOS include rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item or service. The Secretary may also determine which items will be part of the competitive acquisition program, focusing first on the highest cost and volume items and services or those items and services that have the largest savings potential

The MMA requires suppliers to achieve and maintain compliance with CMS DMEPOS quality standards in order to submit a bid and be awarded a contract to become a contract supplier for certain DMEPOS in competitive bidding areas. CMS will establish the new DMEPOS quality standards through program instructions and post them on the CMS website.

The MMA also requires the Secretary to establish a Program Advisory and Oversight Committee (PAOC) to provide advice and assistance to the Secretary in implementing the Medicare DMEPOS Competitive Bidding Program. The PAOC members were appointed by the Secretary and represent a broad mix of relevant industry, consumer, and government entities. CMS has presented numerous issues to the PAOC on the development and implementation of this program and utilized their expertise, knowledge and experience to formulate the proposed methodologies.

Proposed Program

Under the proposed rule, suppliers in a competitive bidding area would submit bids for selected items using a request for bid form provided by CMS. The CMS would use this information to select winning suppliers.

Selection of Competitive Bidding Areas

CMS proposed to select the first 10 competitive bidding areas by looking at a combination of factors including the total population in an area, total Medicare spending in the area on DMEPOS items, per beneficiary spending, and the number of suppliers per beneficiary. However, we proposed to exclude the three MSAs with a population of more than 9 million (New York, NY; Los Angeles, CA; and Chicago, IL) from the 2007 implementation to allow us to obtain additional experience with competitive acquisition before implementing the program in the areas with the largest population. The proposed rule provides illustrative data on the top 50 metropolitan statistical areas (MSA) but we propose to use the most recent data available to actually select the sites under the proposed methodology.

Selection of Competitive Acquisition Items and Services

The MMA gives CMS discretion to phase in items for bidding based on high cost and volume or largest savings potential. CMS proposes to group similar items used for treatment into product categories, such as hospital beds and accessories, so that beneficiaries will be able to receive all related items in the product category from one supplier to minimize disruption of services. CMS proposes to identify the 20 top product categories in terms of total Medicare spending, from which the items or groups of items for inclusion in the bidding process would be selected for the first phase of the program. The bid items may vary by competitive bidding areas.

Bidding

Under the proposed rule, suppliers in a competitive bidding area would submit bids for product categories and CMS would determine the winning suppliers based on these bids. The rule proposes a specific methodology for determining winning bid amounts based on the total capacity needed to meet Medicare demand for DMEPOS items in the area. The Medicare payment amounts would be the median of the winning suppliers' bids for selected items. Suppliers whose bids are lower than the Medicare payment amount set under the competitive bidding program could offer a rebate to beneficiaries.

Suppliers

Suppliers must have a Medicare supplier billing number to submit claims for Medicare payment. In addition, all suppliers must be accredited by a CMS-approved accreditation organization to ensure they meet applicable quality standards. Failure to meet the standards can result in the revocation or suspension of billing privileges and the inability to participate in the Medicare Competitive Bidding Program.

The proposed rule provides an opportunity for suppliers to develop a network to collectively bid to furnish items included in a product category under the Medicare Competitive Bidding Program. This provision would provide important assistance to small suppliers. We also proposed a grandfather provision to allow suppliers who are not selected to participate in the Medicare Competitive Acquisition Program to continue to serve their existing customers.

Impact on Medicare Beneficiaries

The DMEPOS competitive bidding program would have a significant positive impact on Medicare beneficiaries by reducing their out-of-pocket costs. Beneficiary co-payments would be reduced due to lower Medicare DMEPOS prices set through competition. Additionally, beneficiaries may receive rebate offers from the selected contracted suppliers. Because contracted suppliers would be accredited as meeting quality standards, beneficiaries would be assured access to quality medical equipment and DMEPOS supplier services.

Tips for the Public

The proposed rule seeks public comment on a number of key elements of the DMEPOS Competitive Bidding Program. Key elements include:

- The proposed methodology for selecting the ten MSAs for 2007;
- Alternatives to defining Competitive Bidding Areas;
- The proposed methodologies for determining whether an area within an urban area that has a low population density is not competitive;
- Standards for exempting particular rural areas from competitive bidding;
- Methodologies for setting the single payment amount;
- The proposed approach for calculating market demand and estimating supplier capacity;
- Best method of weighting individual items within a product category to determine the composite bid;
- Financial standards evaluation criteria and required documentation;
- Additional options to ensure that small suppliers have opportunities to be considered for participation in the program;

- A process to determine items and/or HCPCS codes for identifying off-the-shelf (OTS) orthotics subject to competitive bidding;
- The proposed rebate process outlined and how to handle those cases in which the rebates would exceed the co-payment amount.

The proposed rule outlines additional requirements that include: 1) application processes to become a CMS approved accreditation organization for the purpose of applying CMS new quality standards for all DMEPOS suppliers; 2) a new fee schedule for home dialysis supplies and equipment that are still paid on a reasonable charge basis; 3) clarification of Medicare policy on the scope of the statutory eyeglass coverage exclusion; and 4) implementation of a revised methodology for calculating fee schedule amounts for new DMEPOS items.

The proposed rule is on display today at the Office of the Federal Register and will be published in the May 1, 2006, *Federal Register*. Public comments will be accepted until June 30, 2006, and a final rule will be published later this year.

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