

**Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies
(DMEPOS) Competitive Bidding Program
Proposed Process for Reviewing Claims for Damages -- 2010 Physician Fee Schedule
and other Revisions to Part B Notice of Proposed Rulemaking (NPRM) (1413-P)
FACT SHEET**

Background:

In 2008, the Centers for Medicare & Medicaid Services (CMS) awarded Round 1 DMEPOS competitive bidding program contracts to certain DMEPOS suppliers. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) terminated these contracts. MIPPA provides a funding source for payment of damages to the extent that any damages may be applicable as a result of the termination of these contracts.

Proposed Process:

This rule proposes the establishment of an administrative process to allow suppliers to request payment for damages and for CMS to determine if such payment is warranted. Pursuant to MIPPA, the rule states that final decisions made through this process would not be subject to administrative or judicial review.

Only an aggrieved person, entity, or network that was awarded a contract in the Round I competitive bidding program and believes it suffered damages as a direct result of the termination of its competitive bid contract would be able to file a claim for damages. Subcontractor(s) of a contract supplier is/are **not** eligible to submit a claim to CMS.

Suppliers would be required to substantiate all costs they are claiming for damages and demonstrate that, if not reimbursed, there will be damages to their company. Claims for damages under this program would be due within 90 days after the effective date of the final rule.

Costs that may be included when filing a claim include:

- Items purchased or rented;
- Additional employee costs;
- Additional inventory costs;
- Additional facility costs.

Costs that may not be included in a claim include, but are not limited to, the following:

- Expenses that would have occurred without a contract having been awarded;
- Cost of submitting a bid;
- Fees or costs incurred for consulting or marketing;
- Accreditation or licensure costs;
- Any cost incurred prior to March 20, 2008 (including the purchase or rental of items or equipment before that date);
- Any cost incurred after July 14, 2008, except costs incurred to mitigate damages.