

MLN Matters Number: SE0833 **Revised**

Related Change Request (CR) #: N/A

Related CR Release Date: N/A

Effective Date: N/A

Related CR Transmittal #: N/A

Implementation Date: N/A

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

Note: This article was revised on February 6, 2009, to reflect the fact that the CAP for 2009 is postponed and the impact of that postponement.

### Provider Types Affected

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

### Provider Action Needed



#### STOP – Impact to You

The Centers for Medicare & Medicaid Services (CMS) has postponed the CAP for 2009.



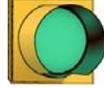
#### CAUTION – What You Need to Know

The contract with the current Approved CAP Vendor, BioScrip Inc., expired December 31, 2008. 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. Emergency restocking requests for drugs used from office stock must be submitted to the Approved CAP Vendor by January 30, 2009. Claims processing for the CAP will continue past January 1, 2009 for claims with dates of service through December 31, 2008, and participating CAP physicians must submit their drug administration claims by January 30, 2009. The physician election period for 2009 that was scheduled for October 1 to November

#### Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

15, 2008 will not be held. In 2009, beneficiaries whose physicians participated in the CAP will only receive a Medicare Summary Notice (MSN) from the CAP designated carrier if the corresponding claims for their Medicare drugs were from dates of service on or before December 31, 2008.



### **GO – What You Need to Do**

See the Background and Additional Information Sections of this article for further details.

## **Background**

---

This article contains information about the Competitive Acquisition Program (CAP). 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.

### ***CAP Is Postponed For 2009***

In 2008, CMS accepted bids for vendor contracts for the 2009-11 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, and the 2009 CAP physician election period scheduled for October 1 to November 15, 2008 will not be held.

### ***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 also 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, and physicians will be liable for the cost of these drugs if they are not returned by February 28, 2009.

#### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

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.

### ***Claims Processing and Billing***

Participating CAP physicians must submit CAP claims to their local carrier or Medicare Administrative Contractor (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, and 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 MSNs from both: the CAP designated carrier, Noridian Administrative Services (NAS), and the local carrier/MAC that processes a 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

#### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

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](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. Please 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 available at <http://www.cms.hhs.gov/CompetitiveAcquisforBios/> on the CMS website.

## **Additional Information**

---

For original overview information on the CAP, please review CR4064 at <http://www.cms.hhs.gov/Transmittals/downloads/R777CP.pdf> and its related article: <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4064.pdf> on the CMS website.

For original background information on the CAP, please review CR4309 at: <http://www.cms.hhs.gov/transmittals/downloads/R866CP.pdf> and its related 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, please review CR4404 at <http://www.cms.hhs.gov/transmittals/downloads/R932CP.pdf> and its related article at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4404.pdf> on the CMS website.

### **Disclaimer**

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

For background information on the CAP post payment review process, please review CR5546 at <http://www.cms.hhs.gov/Transmittals/downloads/R1207CP.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](http://www.cms.hhs.gov/CompetitiveAcquisforBios/15_Approved_Vendor.asp) on the CMS CAP website. Additional information about the CAP designated carrier, NAS, is available at [http://www.noridianmedicare.com/cap\\_drug](http://www.noridianmedicare.com/cap_drug) on their website.

#### Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.