Department of Health and Human Services
Centers for Medicare & Medicaid Services
Center for Medicare
7500 Security Boulevard
Baltimore, Maryland 21244-1850

CENTER FOR MEDICARE
MEDICARE PLAN PAYMENT GROUP

DATE: January 13, 2011

TO: All Medicare Advantage Organizations, Cost Plans, PACE Organizations and Demonstrations

FROM: Cheri Rice, Acting Director
Medicare Plan Payment Group

SUBJECT: **DMEPOS Competitive Bidding Program – Impact on Medicare Advantage Plans**

Section 1847 of the Social Security Act mandates that competitive bidding payment amounts replace the current Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule payment amounts for selected items in selected competitive bidding areas (CBAs). Initially, Round 1 of the program was to begin in July 2008. Subsequent legislation delayed implementation and made a few other changes to the program. The new Round 1 (called the Round 1 Rebid) of the DMEPOS competitive bidding program went live on January 1, 2011. As discussed below, the Round 1 Rebid affects virtually the same geographic areas and the same items that were to be included in the 2008 program, although there are a few exceptions. The fundamental structure of the program is unchanged.

The DMEPOS competitive bidding program changes the amount Original Medicare pays for certain DMEPOS items under Part B by using bids submitted by DMEPOS suppliers to establish new payment rates and is being phased-in in 9 of the largest Metropolitan Statistical Areas (MSAs). The new payment rates became effective on January 1, 2011, in these 9 areas. Beneficiaries with Original Medicare who obtain competitively-bid items in a CBA must now obtain such items from a "Medicare contract supplier" in order for Medicare to pay for the item, unless an exception applies. The program will be expanded into additional areas in the future. See http://www.cms.hhs.gov/DMEPOScompetitivebid/ for additional information on this program. Also see http://www.medicare.gov/Publications/Pubs/pdf/11461.pdf for a comprehensive booklet on the Original Medicare DMEPOS Competitive Bidding Program.

CBAs in which DMEPOS Competitive Bidding Program Was Implemented on January 1, 2011

1 – Charlotte-Gastonia-Concord, NC-SC
2 – Cincinnati-Middletown, OH-KY-IN
3 – Cleveland-Elyria-Mentor, OH
4 – Dallas-Fort Worth-Arlington, TX
5 – Kansas City, MO-KS
6 – Miami-Fort Lauderdale-Pompano Beach, FL
7 – Orlando-Kissimmee, FL
8 – Pittsburgh, PA
9 – Riverside-San Bernardino-Ontario, CA

Note that San Juan, Puerto Rico, is the only CBA included in the original Round 1 DMEPOS competitive bidding program in 2008 that is not included in the Round 1 Rebid program in 2011. CBAs are defined by ZIP code. A list of ZIP codes for each CBA is available on the Competitive Bidding Implementation Contractor (CBIC) website, www.dmecompetitivebid.com .

Product Categories for DMEPOS Competitive Bidding Program Starting on January 1, 2011
The Round 1 Rebid of the competitive bidding program includes the following 9 DMEPOS product categories:

1 – Oxygen, oxygen equipment, and supplies
2 – Standard power wheelchairs, scooters, and related accessories
3 – Complex rehabilitative power wheelchairs and related accessories (Group 2 only)
4 – Mail-order diabetic supplies
5 – Enteral nutrients, equipment, and supplies
6 – Continuous Positive Airway Pressure (CPAP) devices, Respiratory Assist Devices (RADs), and related supplies and accessories
7 – Hospital beds and related accessories
8 – Walkers and related accessories
9 – Support surfaces (Group 2 mattresses and overlays in Miami-Ft. Lauderdale-Pompano Beach CBA only)

Note that negative pressure wound therapy (NPWT) and Group 3 complex rehabilitative power wheelchairs, which were included in the original Round 1 DMEPOS competitive bidding program in 2008, are not included in the Round 1 Rebid program in 2011. A list of Healthcare Common Procedure Coding System (HCPCS) codes in each product category is available on the CBIC website.

Impact on Medicare Advantage Plans

Although the DMEPOS competitive bidding program applies only to Original Medicare, it will potentially impact MAOs and Cost HMOs/CMPs. Since the FFS Medicare payment amount for DMEPOS competitive bid items furnished in CBAs was reduced below the fee schedule payment amount on January 1, 2011, in cases where an MAO or Cost HMO/CMP is legally

required to reimburse a supplier the FFS rate for DMEPOS (for instance, in an emergent/urgent situation), the amount actually reimbursed by such plans could also be reduced since such plans are only required to pay "at least the FFS rate" when they reimburse non-contracting suppliers. (The competitive bid payment amounts are available on the CBIC website.) Additionally, MAOs and Cost HMOs/CMPs need to tell plan members if the DMEPOS competitive bidding program will affect them, including what members should do if they need to change suppliers (e.g., in cases where a member's current supplier is not one of the "Medicare contract suppliers" under DMEPOS competitive bidding program and they cannot be grandfathered under the DMEPOS competitive bidding program). In any event, all members receiving affected DMEPOS supplies in CBAs in 2010 should be notified.

Generally, the DMEPOS competitive bidding program has no direct impact on payment arrangements between MAOs/Cost HMOs/CMPs and the suppliers with which they contract. That said, since MAOs sponsoring PFFS, MSA, HMOPOS, RPPO, and PPO plans are routinely required to reimburse deemed-contracting and non-contracting suppliers with which they do not have written contracts for DMEPOS items, the following items should be considered by these MAOs:

- For MAOs sponsoring PFFS plans that operate in one or more of the CBAs and that pay "the same as Medicare" to deemed suppliers for whom the amount due for DMEPOS competitive bid items was reduced on January 1, there are two options. These options apply to non-network PFFS plans and to full and partial network PFFS plans for the out-of-network DME services furnished by deemed suppliers.

  1. **Adopt the new DMEPOS competitive bidding reimbursement rates and rules.** MAOs that sponsor PFFS plans that adopt this option must update their plans' contract year 2011 terms and conditions of payment to reflect this new reimbursement policy immediately upon the release of this memorandum. The updated terms and conditions of payment must also clearly identify the CBAs where the new policy will apply. MAOs that used the model PFFS terms and conditions of payment for contract year 2011, which was released via HPMS on November 15, 2010, should update Section 4 of the model document. MAOs do not need to resubmit their terms and conditions of payment to their Regional Office Account Manager (AM) for review and approval. However, MAOs are required to inform their AM about the update to their PFFS plans' terms and conditions of payment and provide the AM with a copy of the updated terms and conditions of payment.

  Under this option, PFFS plans operating in one of the CBAs cannot require their members to obtain the DMEPOS competitive bid items only from contract suppliers. Members will continue to have access to deemed suppliers in CBAs who (1) agree to accept the plans' terms and conditions of payment, which, in this case, reflects the new FFS Medicare payment amounts for DMEPOS competitive bid items, and (2) have met Original Medicare accreditation requirements for the DMEPOS supplies.

  MAOs that sponsor PFFS plans must also inform members of any change this will have on member access to DMEPOS suppliers, member cost sharing for such

services, and any transition rules for members currently using such items in a DMEPOS competitive bidding area. For example, plans should educate members on transition rules in cases where the members' current DMEPOS supplier will not accept the Original Medicare payment amounts for the DMEPOS competitive bid items. In this case, members will need to find another DMEPOS supplier who will accept the new payment amounts. PFFS plans may not change the cost sharing for the DMEPOS competitive bid items from the coinsurance rates or copayment amounts that were approved in the plans' bids.

2. **Maintain a higher rate of reimbursement and maintain current rules related to DMEPOS access.**
MAOs sponsoring PFFS plans that adopt this option where the MAO will not adopt the DMEPOS competitive bidding program rates and rules and will continue to pay the higher Original Medicare fee schedule rate for DMEPOS competitive bidding items do not have to change their plans' terms and conditions of payment.

MAOs sponsoring non-PFFS plans where members can routinely self-refer to non-contracting suppliers (MSA, HMOPOS, RPPO and PPO plans) should tell members they can continue to receive DMEPOS items and services from all DMEPOS suppliers who have met Original Medicare accreditation requirements and who are willing to furnish services. The communication may be limited to those enrollees who, during the 2010 contract year, received an item from the affected product categories from an out-of-network supplier. This would be considered an ad hoc communication that should be filed in HPMS on a file and use basis.

- Cost HMOs/CMPs should notify members that if they go out-of-network for DMEPOS for competitive bidding items and those out-of-network suppliers do not follow the Original Medicare competitive bidding program rules, neither the Cost HMO/CMP nor the Original Medicare program will pay.

Finally, for MA plan and Cost HMO/CMP enrollees who received affected DMEPOS supplies in CBAs from suppliers who are not "Medicare contracting suppliers" or suppliers who cannot be grandfathered, liberal policies should be implemented to hold them harmless prior to the expiration of the 30-day notice requirement in 42 CFR 422.111(d) and (e). In other words, beneficiary notices as described above should be sent 30 days before any adverse action by an MAO is taken with respect the DMEPOS competitive bidding program.

If you have any questions about this HPMS notice, please contact Frank Szeflinski on (303) 844-7119, or your Account Manager.