



HME Sector Proposal to Fix Medicare's Competitive Bidding Program for Durable Medical Equipment (DME)

DMEPOS Market Pricing Program (MPP)

Congress' objective in requiring the Medicare Program to use competitive bidding to establish payment amounts for durable medical equipment (DME) was to reduce Medicare and beneficiary expenditures, and ensure that beneficiaries have access to quality items and service. This objective cannot be met because the Centers for Medicare and Medicaid Services (CMS) has designed a program that does not hold bidders accountable, does not ensure that bidders are qualified to provide the products in the bid markets, and produces bid rates that are financially unsustainable. 244 economic auction experts from around the world agree that the current Medicare competitive bidding program is unsustainable in its current form. It will create significant barriers to access and will destroy the HME infrastructure upon which our seniors and people with disabilities rely.

To fix these serious problems with the competitive bidding program, the HME industry developed a legislative proposal that fixes the fundamental flaws. The proposal, known as the Market Pricing Proposal (MPP), would require CMS to make some fundamental changes to ensure a financially sustainable program. It uses an auction system to establish market-based prices around the country. These changes are consistent with Congress' original intent: to create a program that is based on competition and market prices, while maintaining beneficiary access to quality items and services. Key components of MPP are:

- MPP includes the same DME items as the competitive bid program and is implemented across the country in the same timeframe;
- Two product categories are bid per geographic area. Eight additional product categories in that same area would have prices reduced based on auctions conducted simultaneously in comparable geographic areas;
- Bid areas are smaller than metropolitan statistical areas (MSAs) and more homogeneous;
- Bids are binding and cash deposits are required to ensure only serious bidders participate;
- The bid price is based on the clearing price, not the median price of winners;
- The same areas that are exempted under the competitive bidding acquisition program will be exempted in this Act.

The HME sector has spent over a year developing changes to the current program and strongly urges Congress to support MPP. Specifically, AAHomecare urges Congress to pass legislation that would change the current flawed bidding system to a sustainable market pricing program at the earliest legislative opportunity.

Section-by-Section Summary

Section – Title – Medicare DMEPOS Market Pricing Program Act of 2011

Section—Repeal the Medicare DMEPOS Competitive Bidding Program

- Round 1 Rebid contracts awarded before the date of enactment of this legislation would be terminated on June 30, 2013.
- Round 1 Rebid Competitive Bidding DMEPOS payments will stay in place through July 1, 2013. The Secretary shall offer contracts to DMEPOS suppliers in the 9 areas, who participated in the Round 1 Rebid process, but were not offered contracts because their bids were above the pivotal bid. Effective July 1, 2013, the market pricing program will go into effect.

Section—Establishment of a DMEPOS Market Pricing Program

- The DMEPOS market pricing program (MPP) would be effective on July 1, 2013. The Secretary, in consultation with the Auction Expert, shall ensure that the auction design is developed through a collaborative, transparent process, involving all stakeholders (DMEPOS suppliers, CMS, beneficiaries), under the guidance of the Auction Expert and the oversight of the Market Monitor, to establish market rules, to set market-based and sustainable reimbursement rates, and protect beneficiary access to, and choice, of quality DMEPOS products, services, and supplies.
- The Secretary shall ensure that the design is then implemented according to the following timeline:
 - Auction a representative 20 percent of the market (counties eligible for bidding) with two-year contracts starting on July 1, 2013. The remaining market areas eligible for the program shall be served by any eligible suppliers furnishing DMEPOS at the reimbursement rates determined by the auction. The clearing price established through bidding will apply to similar geographic areas (i.e., urban to urban) and be adjusted for regional characteristics. Thereafter, auction a representative 10 percent of the market (counties eligible for bidding) with two-year contracts starting on July 1 of the year of auction. An additional 10 percent of eligible market areas will be subject to auction each subsequent year until market pricing programs are occurring in 100 percent of eligible market areas throughout the United States. The Secretary, with consultation with the auction expert, shall continue to select additional eligible market areas on an ongoing and rotating basis.
- Other Required Elements of the Market Pricing Program
 - Market Areas - Established by the Secretary upon recommendation of the Auction Expert and reviewed by the Market Monitor and are composed of a county, an aggregation of counties or parts of counties that together form an economically interdependent area. Large counties shall be permitted to be subdivided.

- Exempting Rural Areas – The same areas that are exempted under the competitive bidding acquisition program will be exempted in this Act.
- OIG verification of market pricing programs is in place for the first two years and may continue.
- Covered Items and Services - Items and services subjected to auction include:

“(i) Oxygen supplies and equipment;

“(ii) Standard power wheelchairs, power scooters and related accessories;

“(iii) Manual wheelchairs;

“(iv) Enteral nutrients, equipment, and supplies;

“(v) Continuous positive airway pressure devices, respiratory assistive devices, and related supplies;

“(vi) Hospital beds and related accessories;

“(vii) Walkers and related accessories;

“(viii) Support services;

“(ix) Negative pressure wound therapy pumps and related supplies and accessories;

“(x) Diabetic supplies;

“(xi) Items and services currently eligible to participate in the competitive acquisition program established under paragraph (1) if, as of January 1, 2011, such items had been selected by the Secretary for inclusion in such program; and

“(xii) Other items and services (other than those items and services specified in subparagraph (B)) that could have been subject to participation in the competitive acquisition programs established under this Act.

- Excluded Items - The Secretary shall not include the following items and services in the market pricing program:

“(i) Adjustable skin protection cushions used in connection with a wheelchair;

“(ii) Complex rehabilitative power wheelchairs and related accessories; and

“(iii) Manual wheelchairs billed using current HCPCS Code K0005 and related accessories.”.

- Transparent Process Required - In establishing such market design, the Secretary shall utilize an open and transparent process that involves all relevant stakeholders in the market and shall comply with the requirements of this Act.
- Auction must be developed by experts, with stakeholder input.
- Provider and beneficiary education would be required in consultation with the Auction Expert subject to the Market Monitor.

Subsection—Market Design

- The Secretary shall conduct an auction beginning no later than March 2013 and ensure that the market has these basic features:
 - In each market area, 2 product categories will be auctioned, producing the clearing price and limiting supplying rights to bid winners. The “lead product” shall be submitted for bid in the auction.
 - Use of the market clearing price (the first excluded bid in each product area) for each product area.
 - For each product category, a lead product is determined by the Auction Expert on the basis of cost and utilization. Only the “lead product” is bid. The “lead product” sets the pricing for the category and the pricing of all other products in the product category is set relative to the “lead product”. The lead product is the baseline pricing for the category, and establishes the clearing price. The Auction Expert will aggregate the various price weighting percentages reported for each product to adopt a single capacity-weighted average. This relative price index will be publicly disclosed in advance of the auction so that each bidder will know how each product price will be determined in the auction.
 - DMEPOS suppliers whose bid is below the clearing price will be offered a contract for a two-year period. Suppliers whose bids are below the clearing price must accept the contract.
 - The statistical model used to adjust reimbursement rates in areas not under contract shall be set by the Secretary on recommendation of the Auction Expert with input from the stakeholders conference and oversight of the Market Monitor, with reimbursement rate adjustments made on an annual basis; the model shall be reviewed and changes implemented every two years to ensure stakeholder fairness.
 - A product-specific grandfathering period may be set by the Secretary on recommendation of the Auction Expert with oversight of the Market Monitor. And qualified suppliers may furnish items not under contract in bid areas.

Section—Establishment and Responsibilities of Auction Expert

- The Secretary shall, through the Office of the Assistant Secretary of Planning and Evaluation, and within three months of bill passage, contract with an auction expert, through a transparent, competitive process, specializing in auctions for a four-year term to assist the Secretary in the design, implementation and functioning of all competitively bid markets and products.

Section—Establishment and Responsibilities of Market Monitor

- The Secretary shall, through the Office of the Assistant Secretary for Planning and Evaluation, and within three months of bill passage through a competitive process, contract with a Market Monitor for a four-year term to oversee the design, implementation and functioning of the market pricing program.

Section—Application of Certain Provisions

- The PAOC would be made permanent, subject to FACA, and terms of PAOC members extended for an additional 3 years.
- Negative Pressure Wound Therapy—Include new standards developed in consultation with the industry as part of a new appendix to the Medicare DMEPOS Quality Standards.
- Appropriations set aside to operate the current Medicare DMEPOS competitive bidding program would be shifted to operate the DMEPOS Market Pricing Program.