Calendar Year 2023 Update for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule (the “Inflation” Update)

Today, CMS released Transmittal 11722 *Change Request 13006,* which is the quarterly fee schedule update for DMEPOS, and includes the annual inflation factor to be applied to DMEPOS items effective January 1, 2023, with an implantation date of January 3, 2023. The release also includes related fee schedule information applicable to the Coronavirus (COVID-19) Aid, Relief, and Economic Security (CARES) Act, 2020, and several other updates which will be summarized below.

*DMEPOS Inflation Update & Background:*

The DEMPOS update for non-competitive bid items is calculated by measuring the increase in the consumer price index for all urban consumers (CPI-U) for the 12-month period ending with June of the previous year. Starting in the calendar year 2011, the change in the CPI-U is now reduced by a so-called “productivity adjustment”, which is equal to the 10-year moving average of changes in the economy-wide private nonfarm business multi-factor productivity index (MFP). The resulting update is then added to the conversion factor used to calculate Medicare payments under the DMEPOS Fee Schedule.

For the 12-month period ending in June 2022, the Federal Bureau of Labor Statistics (BLS) has calculated that the CPI-U increased by 9.1%. CMS further indicated that the CY 2023 MFP would be 0.4%. Accordingly, CMS should indicate that the **DMEPOS Inflation Factor for the calendar year 2023 will be 8.7% for non-competitive bid items.**

*Important Note re “Competitive Bid Items”:*

Competitive bid items (that is, those HCPC codes that were included in Round 2021 but where contracts have not been awarded in Round 2021 of the Competitive Bid Program) fall within a different 12-month calculation. Instead of a “June to June” CPI-U application, competitive bid item updates in CBAs are calculated on a 12-month calendar measurement.

“…pursuant to §414.210(g)(10),the fee schedules for these items and services furnished in CBAs are based on the SPAs in effect in the CBA on the last day before the CBP contract period of performance ended (i.e., December 31, 2018), *(author’s note: this was the last full “round” of bidding*) increased by the projected percentage change in the Consumer Pricing Index for Urban Areas (CPI-U) for the 12-month period on the date after the contract periods ended. The fee schedule amounts are increased once every 12 months on the anniversary date of the first day after the contract period ended with the CPI-U. For Calendar Year (CY) 2019, the fee schedule amounts for these items were adjusted based on the SPAs for each specific CBA, increased by the projected percentage change in the CPI-U of 2.5 percent for the 12-month period ending January 1, 2019. For CY 2020, the adjusted fee schedule amounts were increased by the projected change in the CPI-U of 2.4 percent. For CY 2021, the 2020 adjusted fee schedule amounts are increased by the projected percentage change in the CPI-U of 0.6 percent for the 12-month period ending January 1, 2021. For CY 2022, the 2021 adjusted fee schedule amounts are increased by the projected percentage change in the CPI-U of 5.0 percent for the 12-month period ending January 1, 2022. **For CY 2023, the 2022 adjusted fee schedule amounts for competitive bid items in CBAs are increased by the projected percentage change in the CPI-U of 6.4 percent for the 12-month period ending January 1, 2023.**

Accordingly, as the CPI/U “January 2022 to January 2023” amount was less than the “June 2021 to June 2022” amount, these items will receive less of an increase. To be clear, for CY 2023, an update factor of 8.7 percent[[1]](#footnote-1) will be applied to DMEPOS fee schedule amounts that are “not adjusted using information from CBPs”.

*Competitive Bid Items in Non-CBAs*

While not specifically included in this Transmittal, **competitive bid items in non-CBAs should receive a 9.1% increase.**

CMS does not specifically publish in its Transmittals the CPI-U increase for CBP items in non-CBAs. Rather it references certain Social Security Act language (see below) which, based on this information, these areas should receive the June 2022 CPI-U, again which was 9.1%.

Here is the section: **(*4) Payment adjustments using data on items and services included in competitive bidding programs no longer in effect****. In the case where adjustments to fee schedule amounts are made using any of the methodologies described, other than paragraph (g)(10) of this section, if the adjustments are based solely on single payment amounts from competitive bidding programs that are no longer in effect, the single payment amounts are updated before being used to adjust the fee schedule amounts. The single payment amounts are updated based on the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) from the mid-point of the last year the single payment amounts were in effect to the month ending 6 months prior to the date the initial fee schedule reductions go into effect. Following the initial adjustments to the fee schedule amounts, if the adjustments continue to be based solely on single payment amounts from competitive bidding programs that are no longer in effect, the single payment amounts used to reduce the fee schedule amounts are updated every 12 months using the percentage change in the CPI-U for the 12-month period ending 6 months prior to the date the updated payment adjustments would go into effect.*

In any case, CMS will be publishing the official CY 2023 fee schedule soon.

*Other Items Within the Change Request*

Section 3712 of the CARES Act was signed into law on March 27, 2020. The fees in the January 2023 fee schedule update continue to reflect the requirements of the CARES Act. Sections 3712(a) and (b) of the CARES Act, respectively, require the following: (a) **For items and services subject to the fee schedule adjustments furnished in rural or non-contiguous areas, the fee schedule amounts will continue to be based on a blend of 50 percent of the adjusted fee schedule amounts and 50 percent of the unadjusted fee schedule amounts through December 31, 2020, or the duration of the COVID-19 public health emergency, whichever is later**. (b**) For items and services subject to the fee schedule adjustments furnished in non-rural contiguous non-Competitive Bidding Area (non-CBAs), the fee schedule amounts will be based on a blend of 75 percent of the adjusted fee schedule amounts and 25 percent of the unadjusted fee schedule amounts for claims with dates of service beginning March 6, 2020, and continuing until the end of the COVID-19 public health emergency.**

Since the public health emergency has not ceased, the update for the 2023 DMEPOS and PEN fee schedule files continue to include the rural and non-contiguous non-CBA 50/50 blended fees and the non-rural contiguous non-CBA 75/25 blended fees required by section 3712 of the CARES Act.

To determine the adjusted fee schedule amounts, the average of the Single Payment Amounts (SPAs) from CBAs located in eight different regions of the contiguous United States are used to adjust the fee schedule amounts for the states located in each of the eight regions. These Regional SPAs or RSPAs are also subject to a national ceiling (110% of the average of the RSPAs for all contiguous states plus the District of Columbia) and a national floor (90% of the average of the RSPAs for all contiguous states plus the District of Columbia).

*Zip Code Clarification & Information*

The ZIP code associated with the address used for pricing a DMEPOS claim determines the rural fee schedule payment applicability for codes with rural and non-rural adjusted fee schedule amounts. The DMEPOS Rural ZIP code file contains the ZIP codes designated as rural areas. The DMEPOS Rural ZIP code file is updated on a quarterly basis as necessary. Regulations at §414.202 define a rural area to be a geographical area represented by a postal ZIP code where at least 50 percent of the total geographical area of the ZIP code is estimated to be outside any MSA. A rural area also includes any ZIP Code within an MSA that is excluded from a competitive bidding area established for that MSA.

A former CBA ZIP code file contains the competitive bidding area ZIP codes used in pricing a claim for an item furnished in a CBA and will be updated on a quarterly basis as necessary. Beginning January 1, 2023, the former CBA ZIP code file will contain the CBA ZIP codes for the items in the 13 product categories where contracts were not awarded in from Round 2021 of the competitive bid program.

*The DMEPOS Fee Schedule File for 2023*

When released (<https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule>), the recurring update notification will provide updates for the following files:

1. DMEPOS fee schedule file for 2023

2. DMEPOS Rural ZIP code file for Quarter 1, 2023

3. DMEPOS Parenteral and Enteral Nutrition (PEN) fee schedule file for 2023

4. Former Competitive Bidding Areas (CBA) Fee schedule file

5. Former CBA National Mail Order diabetic testing supply fee schedule

6. Former CBA ZIP Code

*Oxygen Budget Neutrality*

**For CY 2023, a budget neutrality offset is not applied**. A budget neutrality offset, set forth in section 1834(a)(9)(D)(ii) of the Act, no longer applies to oxygen payment classes and items in accordance with section 121 of division H of title II of the Consolidated Appropriations Act of 2021 (P.L. 116-260) effective April 1, 2021.

The entire Change Request 13006 may be accessed via the attachment.

Questions? Please contact Mark Higley at mark.higley@vgm.com or call 319.504.9515.

1. In accordance with the statutory sections 1834(a)(14), 1834(h)(4) and 1842(s)(1)(B) of the Act, certain DMEPOS fee schedule amounts are updated for 2023 by the percentage increase in the consumer price index for all urban consumers (United States city average) CPI- U for the 12-month period ending June 30, 2022, adjusted by the change in the economy-wide productivity equal to the 10-year moving average of changes in annual economy-wide private nonfarm business Multi-Factor Productivity (MFP). In the above statutory sections, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) was published by the United States Bureau of Labor Statistics (BLS) as private nonfarm business MFP. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term multifactor productivity with Total Factor Productivity (TFP) stating that this is a change in terminology only and will not affect the data or methodology. The CY 2023 productivity adjustment is the TFP which reflects the 10-year moving average of changes for the period ending June 30, 2022. Additional information on the TFP is available at https://www.bls.gov/productivity/technical-notes/

For CY 2023, the TFP adjustment is 0.4 percent and the CPI- U percentage increase is 9.1 percent. Thus, the 9.1 percentage increase in the CPI-U is reduced by the 0.4 percentage increase in the TFP resulting in a net increase of 8.7 percent for the update factor. [↑](#footnote-ref-1)