



Testimony before the

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Committee on Energy and Commerce

Subcommittee on Health

Medicare's Competitive Bidding Program for Durable Medical Equipment:
Implications for Quality, Cost and Access

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Mr. Chairman and ladies and gentlemen of the Committee on Energy and Commerce, Subcommittee on Health:

The Center for Medicare Advocacy is pleased to offer this brief testimony for today's hearing, "Medicare's Competitive Bidding Program for Durable Medical Equipment: Implications for Quality, Cost and Access." Our testimony today focuses on access and beneficiary education, with respect to the Competitive Bidding program. The Center is a national, not-for-profit organization that advocates on behalf of older people and people with disabilities to ensure access to fair, comprehensive, and affordable health care. We are a beneficiary-focused advocacy group. Although headquartered in Connecticut, we work with beneficiaries and their advocates throughout the nation.

General Confusion about the DMEPOS Program and Access

A major concern of beneficiaries is that the Durable Medical Equipment Prosthetics Orthotics and Supplier Program (DMEPOS), including competitive bidding, not result in a decrease in beneficiary access to suppliers. At this point, there is confusion and conjecture about the consequences of the program, both positive and negative. Even so, our anecdotal experience is that suppliers are applying for certification and complying with the other DMEPOS requirements. We remain watchful as the program unfolds.

It is imperative that throughout the roll-out of the Competitive Bidding program beneficiaries are provided good, clear information about the rules of the program and about their rights and responsibilities. We are concerned that information about the program for beneficiaries is lacking and incomplete and is often difficult to find. The "Medicare.gov" website, for example, does not contain information about the DMEPOS competitive bidding program on its home page. A search for durable medical equipment on the site takes one to a Medicare Supplier Directory. When a zip code in a competitive bidding area (CBA) is entered (33394, Ft. Lauderdale, FL), the resulting page does not include information about the new program. The Centers for Medicare & Medicaid Services (CMS) publication, "What You Should Know if You Need Medicare-covered Equipment or Supplies," revised June 2010, does not appear among the listing of publications under the publications icon on the web site. One gets to the link by searching the website for "DME competitive bidding." Few beneficiaries will know enough about the program to engage in that kind of search to get basic information.

Since its inception, the DMEPOS program has been an enigma for the beneficiary community. Confusion reigns as providers vociferously opposed competitive bidding, including supplier certification, claiming that beneficiaries would not be able to obtain necessary supplies and services. We have heard concerns from beneficiaries in areas like Boston that are not subject to the DMEPOS competitive bidding program. They have heard from their suppliers that the new program will interfere with their ability to get access to supplies and/or repairs, even though they are not yet subject to the program.

Adding to the general confusion of beneficiaries about the DMEPOS program is Congressional action postponing the Competitive Bidding aspects of the program, followed by Congressional

action requiring that the Medicare agency engage in “Round 1” rebidding. And, just a few days ago, on August 27, 2010, the Medicare agency issued final regulations that DMEPOS suppliers and providers must meet. See 75 Fed. Reg. 52629. Undoubtedly, there will be months of controversy surrounding the implementation and application of these new regulations.

For beneficiaries, it is important that the Medicare agency, tasked with implementing the DMEPOS competitive bidding program, speak with a loud and clear voice about the rules of the program, the limits placed on supplies as to registration and certification, and advertising and solicitation of beneficiaries. In addition, it is important that the Medicare agency, CMS, provide clear information about what beneficiaries need to know when their DMEPOS items need to be repaired and replaced while they are out of the service area covered by their particular supplier or supplier network. Similarly, it is important for beneficiaries to have good information about their appeal rights when things go wrong, as well as good information about where they can turn for help. Right now, we are not seeing evidence of a vigorous campaign to educate the beneficiary community. CMS needs to step up its educational campaign to ensure that Medicare beneficiaries of all ages are aware of the changes. The agency’s current round of educational events in ten (10) areas is not enough. Additionally, CMS needs to make clear to beneficiaries who are not in the competitive bidding areas how the new rules affect them.

What Is Covered and In What Geographic Areas

The Round 1 rebid will include the following categories of items and services: Oxygen Supplies and Equipment; Standard Power Wheelchairs, Scooters, and Related Accessories; Complex Rehabilitative Power Wheelchairs and Related Accessories (Group 2); Mail-Order Diabetic Supplies; Enteral Nutrient, Equipment and Supplies; Continuous Positive Airway Pressure (CPAP); Respiratory Assist Devices (RADs), and Related Supplies and Accessories; Hospital Beds and Related Accessories; Walkers and Related Accessories; Support Surfaces (Group 2 mattresses) and overlays in Miami.

It is important that the Medicare agency provide more clarity about the specific items of DMEPOS subject to the competitive bidding process, including clear information when new items are added to the list of DMEPOS subject to competitive bidding. For example, there is confusion over the types of wheelchairs that are not included in the program. Similarly, it is critical to provide clear information about the areas covered. For example, the competitive bidding area described as Miami-Ft. Lauderdale –Pompano encompasses many more communities than the three specifically identified. By defining the service area in terms of only three communities in this much larger and highly-populated area, CMS is creating a false sense for beneficiaries that they do not have to pay attention to the new program. Even one of our staff attorneys did not realize that her family members were in this service area because of the way it has been described.

Competitive bidding is to occur in the nine largest Metropolitan Statistical Areas (MSAs): Cincinnati-Middletown (OH, KY and IN); Cleveland-Elyria-Mentor (OH); Charlotte-Gastonia-Concord (NC and SC); Dallas-Fort Worth-Arlington (TX); Kansas City (MO and KS); Miami-

Fort Lauderdale-Miami Beach (FL); Orlando (FL); and Pittsburgh (PA); Riverside-San Bernardino-Ontario (CA).

It will continue to be critical to provide clear information when new Metropolitan Statistical Areas (MSAs) are added which will bring even more suppliers and providers into the DMEPOS program. Likewise, there is the need for information for beneficiaries who obtain their DMEPOS products through mail-order suppliers and suppliers with respect to DMEPOS requirements applicable to such supplies.

Mail Order Supplies, Including Diabetic Supplies

The purchase of diabetic testing supplies also raises problems. Under the DMEPOS rules, a Medicare beneficiary who is a permanent resident in a CBA may purchase diabetic testing supplies from a mail order contract supplier serving the area in which he or she is a permanent resident or from a non-contract supplier in cases when the supplies are not furnished on a mail order basis. In this case, the diabetic supplies will be reimbursed at the single payment amount for the CBA where the beneficiary maintains a permanent residence. Moreover, when the diabetic supplies are not furnished through mail order, the suppliers will be paid the fee schedule amount. Sorting this out will likely cause problems and may result in delays in receiving necessary supplies as well as payment problems.

Grandfathered Suppliers

Medicare's statutory and regulatory definition of covered DMEPOS suppliers is quite broad. This is made abundantly clear in the new final regulations mentioned above. We fear great confusion among beneficiaries and suppliers about these rules. In many instances, beneficiaries will not know that their physicians, nurse practitioners, and physical therapists might be subject to the regulations of the DMEPOS program, unless "grandfathered." This will likely cause confusion, particularly where DMEPOS items might be provided through a physician's or other practitioner's office. Again, the "watch words" for us are clear, comprehensive information.

With respect to confusion occasioned by "grandfathering," the DMEPOS program allows certain special physician/practitioners (nurses, physician assistants, clinical nurse specialists, and physical therapists and occupational therapists in private practice) to receive payment for certain competitively-bid items furnished to their own patients as part of their professional services, even though they have not submitted a bid and have not been selected as a contract supplier. For example a physician's office devoted to orthopedic medicine, might make certain walkers and canes available for purchase through its practice.

Beneficiaries who are renting an item of DME, or oxygen and oxygen equipment, that meets the definition of a "grandfathered" item may elect to obtain the item from a grandfathered supplier. In this instance, beneficiaries need clear information about whether their physician/practitioner comes under the grandfathering provision of the DMEPOS program.

Advance Beneficiary Notices

The consequences for beneficiaries when using a non-contract supplier are significant. Beneficiaries must be provided information about the importance of obtaining an Advance Beneficiary Notice (ABN) so that they fully understand the consequences of using non-contract suppliers, including possible waiver rights and higher payment rates. For example, contract-suppliers must accept assignment (that is, Medicare's reasonable charge amount, with the beneficiary being responsible for a twenty percent (20%) copayment amount, or the fee schedule amount) if they provide competitively-bid equipment to Medicare patients who reside in a CBA.

A signed ABN indicates that the beneficiary was informed in writing prior to receiving the item that there would be no Medicare coverage due to the supplier's contract status and that the beneficiary understands that he or she will be liable for all costs that the non-contract supplier may charge for the item. In general, if a non-contract supplier in a CBA furnishes a competitively-bid item to any Medicare beneficiary, Medicare will not make payment unless there is an applicable exception, regardless of whether the beneficiary maintains a permanent residence in the CBA. In these circumstances, the beneficiary is not liable for payment unless the non-contract supplier in a CBA obtains an Advanced Beneficiary Notice (ABN) signed by the beneficiary.

Knowing Which Suppliers Are in Your Network and Supplier Calls

DMEPOS rules about supplier use of cell phones, pagers, call-forwarding and other devices while away from their places of business are complicated and problematic. The rules establish a complex scheme for determining whether such use is permitted for purposes of defining working from one's place of business, as well as defining supplier networks within a CBA. While these rules are intended to tighten the definition of a supplier for purpose of the DMEPOS program, they are confusing. Many professionals conduct a great deal of their business and professional work by such devices. It is important that more clarity be provided in this regard. Further, a beneficiary will have little or no ability to know whether a supplier call is in fact in violation of such rules with respect to suppliers only making calls from their places of business and during business hours. And, of course, toll-free numbers add further complications.

Finding a Supplier

An emerging concern is that DMEPOS program rules that beneficiaries must follow in finding or acquiring a DMEPOS supplier will be burdensome. For example, CMS has sent notification letters to beneficiaries who may need to change suppliers in order for Medicare to pay for their equipment and supplies. The letter encourages each beneficiary to check with his/her supplier to make sure that the supplier meets the new requirements and provides instructions for the beneficiary to find another supplier, if necessary. Sorting through current supplier responses will be difficult. Equally difficult will be the prospect of finding an alternative provider. For persons who are ill, have diminished capacity, or have other mental or physical limitations, the challenge will be especially daunting.

Small Suppliers and Networks

In addition, the DMEPOS rules contain special provisions for small suppliers, including allowing them to form networks of small suppliers. It will be nearly impossible for beneficiaries to act with confidence in choosing a supplier, particularly with respect to understanding provider networks. There is fear in the beneficiary community about reliability of networks. Will entities with no experience in supplying DME utilize this approach to do business, and perhaps not provide the quality of service that the beneficiary expects?

The change may be a major issue when the beneficiary needs a repair or replacement and has difficulty identifying the particular supplier or supplier group that is responsible for the repair. This will only be compounded when a beneficiary is away from his or her supplier's service area network while traveling. In general, the beneficiary will have to know and make provision for getting such repairs or replacements made in advance as the DMEPOS rules require that such repairs and replacements are done by the supplier in the CBA in which the beneficiary maintains a permanent residence, unless the supplier or the supplier network has arrangements with certified suppliers in the areas in which the beneficiary is traveling.

Repair and Replacement in One's Competitive Bidding Area

Other confusion points, and a source for strong beneficiary education efforts, are the rules applicable to beneficiaries who are permanent residents within a CBA. These permanent residents are required to obtain replacement of all items subject to competitive bidding from a contract supplier, including replacement of base equipment and replacement of parts or accessories for base equipment that are being replaced for reasons other than servicing of the base equipment. Absent a strong effort to establish a comprehensive beneficiary education effort on behalf of the Medicare agency, beneficiaries in this circumstance may face serious access and payment challenges.

There may be situations in which a beneficiary from a non-CBA is visiting a CBA and needs a repair that cannot be done by the beneficiary's supplier. This beneficiary and the beneficiary's supplier may not be aware of the new rules. Again, a strong educational effort is needed to ensure that all beneficiaries are made aware of the need to utilize a contract supplier when they are in a CBA.

Conclusion

We remain cautious about the DMEPOS program. Its goals are laudable and we hope they will in fact lead to overall cost savings, while reducing fraud, waste, and abuse. Of major concern in this effort is that beneficiaries are able to get the services they need, that they are provided good information about the DMEPOS program, and that they have ready recourse when problems

arise. We worry, too, about suppliers that use the DMEPOS program as an excuse to make business decisions, unrelated to the new program, that adversely impact beneficiary access.

Thank you very much.

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