



The Medicare Improvements for Patients and Providers Act, Enacted into Law on July 15, 2008

Sec. 154, Delay and Reform of Medicare DMEPOS Competitive Acquisition Program and

Sec. 144, Payment and Coverage Improvements for Patients with Chronic Obstructive Pulmonary Disease

Summary:

The legislation, enacted into law on July 15, 2008 when Congress overturned the President's veto, would **reform and delay implementation of the competitive bidding program** for Medicare durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) in order to make improvements to the bidding process, establish quality measures, and make other reforms. The cost of the delay would be offset by a reduction in current DMEPOS payment rates.

The law (Sec. 144) also **repeals transfer of ownership of oxygen equipment** that was enacted in the Deficit Reduction Act of 2005. After the 36th month of continuous month during which payment is made for oxygen equipment, the supplier shall continue to furnish the equipment during any period of medical need for the remainder of the reasonable useful lifetime of the equipment, as determined by the Secretary of Health and Human Services. Payments for oxygen contents will be made after the 36th month. However, rental payments for oxygen equipment are still subject to the 36-month cap. Maintenance and servicing payments shall be made if the Secretary determines such payments are reasonable and necessary.

Bidding Delay:

- The law terminates contracts under Round One and will restart the contracting process in 2009, delaying program implementation for 18 months.
- Round Two contracting process begins in 2011.
- Payment adjustments in non-bid areas may not take effect until Round Two is completed.

Budget Offset:

- In 2009, the law eliminates the annual consumer price index payment update (CPI) and reduces payments by 9.5 percent nationwide for those items subject to competitive bidding in Round One. All other items would receive the CPI update.
- In 2010 through 2013, all items would receive CPI update.
- In 2014, items that had been subject to the 9.5 percent reduction would receive an additional 2 percent update over the CPI except in areas where competitive bidding contracts are already in place.

Bidding Process Improvements:

- The law requires CMS to notify bidders of paperwork discrepancies and to give them an opportunity to correct within a reasonable time frame.

- Provides CMS with the authority to subdivide metropolitan statistical areas (MSAs) with 8 million or more in population.
- Exempts rural areas and MSAs with a population of 250,000 or less from competitive bidding for at least 5 years.
- Requires that suppliers who bid on diabetic testing supplies to offer brands that cover at least 50 percent of the market by volume (does not apply to Round One).
- Before using its authority to adjust prices in non-bid areas, CMS must issue a regulation and consider how prices set through competitive bidding compare to costs for such items in non-bid areas.
- Requires HHS Office of Inspector General to verify calculations used to determine the pivotal bid amount and winning bid amounts.

Quality Measures:

- Requires all suppliers to be accredited by October 1, 2009. Ensures that all suppliers, whether billing Medicare directly or subcontracting, are accredited.
- Requires contracting suppliers to disclose all subcontracting relationships to CMS.
- Excludes physicians and other practitioners from DME accreditation.
- Establishes a separate ombudsman within CMS to handle supplier and beneficiary issues related to the competitive bidding program.

Other Improvements:

- Excludes complex rehab (defined as group 3 power wheelchairs and above and the accessories furnished with them) from the bidding program.
- Excludes negative pressure wound therapy from Round One and require CMS to evaluate how these items are coded and paid.
- Excludes Puerto Rico from Round One rebidding (did not receive enough valid bids in many product categories to award contracts in original Round 1 bidding).
- Allows physicians and other treating practitioners to supply off-the-shelf orthotics to their patients without being awarded a contract.
- Allows hospitals in bidding areas to supply the same DME items that physicians and other practitioners are allowed to supply (those that are considered an integral part of professional services, i.e. walkers, canes, crutches, etc.) without being awarded a contract.
- Ensures that podiatrists and other similar practitioners can prescribe DMEPOS items by using a broader definition of physician (this was a drafting error in MMA that they are correcting).
- Delays mandated GAO report to coincide with Round One and expand scope of report.