

Section-by-Section Summary

DMEPOS Market Pricing Program (MPP)

October 21, 2011

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.
 - Bidders must provide a cash deposit or irrevocable letter of credit (LOC) (from a qualified institution) of 10 percent of expected annual volume as a bid guarantee and winning bidders must provide same as a performance guarantee. Winning bidders must accept a contract (binding bid).
 - 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.

- In the market area the reimbursement rates of the other products subject to the MPP shall be established by reference to reimbursement rates established in economically similar areas in which that product category was subject to auction and all qualified suppliers able to accept that price would have the right to provide products and related services.
- 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.
- The capacity of each bidder for each product category in each market area shall be set in an objective and unambiguous way based on historic Medicare supply. Historic Medicare supply is based on the “lead product” within a product category.
- Small businesses are defined at \$3.5 million in revenue or less and shall represent at least 30 percent of total capacity in each market area.
- Within three months of the design conference, the Auction Expert shall develop a final auction design recommendation.
- The Auction Expert shall lead a bidder’s conference in advance of each auction to educate participants on all aspects of the auction.

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.

- Auction Expert may not be a current government employee, a current or former CMS employee, or a current or former CMS contractor that has been involved in competitive bidding or administrative pricing work before the passage of this law.
- Auction Expert must have experience in designing and implementing auctions of similar complexity in the public sector and have appropriate advanced degrees. The Secretary shall provide the Auction Expert with access to all confidential information on the relevant markets.
- The Auction Expert, within two months of appointment, shall develop a draft auction design; the draft design provides the starting point of the collaborative rule-making process.
- The Auction Expert shall lead a design conference, convened by the Secretary within four months of the Auction Expert’s appointment, including DMEPOS suppliers, beneficiaries, CMS and other Federal personnel, and the Medicare Program Advisory and Oversight Committee (PAOC) to collaboratively design an efficient auction consistent with best science and practice. The design conference shall be recorded and available over the Internet.
- The design conference shall include a demonstration of the preliminary auction design, in which attendees participate in a mock auction.

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.
 - Minimum qualifications of the Market Monitor:
 - Experience in auction design and implementation and auction monitoring activities with auctions in the public sector and with auctions of this complexity.
 - Market Monitor may not be a current government employee, a current or former CMS employee, or a current or former CMS contractor that has been involved in competitive bidding or administrative pricing work before the passage of this law.
- The Secretary shall provide the Market Monitor with access to all confidential information on the relevant markets.
- The Market Monitor shall review the draft auction design within one month of its release.

- The Market Monitor shall provide quarterly reports, beginning with the report on the draft design, to the Secretary on the development and operation of the program, identifying potential problems and recommending solutions.
- The Market Monitor shall provide an annual report to Congress on the development and operation of the market and auction process, identifying potential problems, recommending solutions and reviewing HCPCS codes for appropriateness for bidding.

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.