WHITEPAPER
AMERICAN ASSOCIATION FOR HOMECARE

2017 RURAL FEE SCHEDULES FOR OXYGEN CONCENTRATORS

PROBLEM

The Centers for Medicare and Medicaid (CMS) incorrectly applied a budget neutrality "offset" to 2017 rural fee schedules for oxygen concentrators, improperly reducing 2017 concentrator (HCPCS E1390) reimbursement in rural areas below the average regional competitive bidding special payment amounts (SPAs) on which they are based. This outcome is inconsistent with the laws and regulations that govern Medicare reimbursement for oxygen and oxygen equipment.

SOLUTION

CMS can restore 2017 rural payments for concentrators to their appropriate levels using the methodology for SPA based adjusted fee schedules specified under Medicare regulations.

BACKGROUND

CMS reduced payments for concentrators in 2007 to offset higher payments for so-called oxygen generating portable equipment (OGPE). The offset was designed to keep changes in overall oxygen payments budget-neutral consistent with the statute authorizing higher reimbursement for some types of oxygen equipment. The offset applies *only* to payment amounts for concentrators under fee schedules derived from suppliers' *reasonable charges* according to § 1834 (a) of the Social Security Act (SSA) (the "unadjusted" fee schedules).

The 2017 fee schedules for concentrators in rural areas are based on regional average SPAs from competitive bidding areas (CBAs) (the "adjusted" fee schedules). Adjusted and unadjusted fee schedules represent two diametrically opposed and irreconcilable payment methodologies governed by different statutory authorities. Unadjusted fee schedules under § 1834 (a) are derived from supplier reasonable charge data for the 1986-1987 base year. They are fundamentally different from and contrary to adjusted fee schedules derived from competitive bidding "market" based SPAs under § 1847 of the SSA.

1. The budget neutrality offset for E1390 concentrators applies only to concentrator payment amounts under the unadjusted fee schedules based on suppliers' reasonable charges.

The Omnibus Budget Reconciliation Act of 1987 established the unadjusted fee schedules for oxygen reimbursement using suppliers' reasonable charges from the 1986-1987 base year. Charge-based fee schedules were designed to capture and account for suppliers' costs of furnishing oxygen. For years after 1992, § 1834 (a) stipulates that monthly payments for oxygen equal the "*national monthly limited payment rate*" subject to an annual increase or decrease according to an update factor. Section 1834 (a) stipulates that the unadjusted fee schedules are the "exclusive" payment method for oxygen under Medicare Part B.

The unadjusted fee schedules were at first modality neutral, meaning that Medicare paid the same bundled rate for oxygen and oxygen equipment without regard to the "modality" of the oxygen a beneficiary received. Suppliers received the same payment for the stationary system whether it was a concentrator or a liquid or gas system that required oxygen "refills." Suppliers also received "add-on" payments for portable equipment which also required refills of liquid or gaseous contents.

The Balanced Budget Act of 1997 authorized CMS to pay different amounts for different categories of oxygen equipment as long as payment changes in a year were budget neutral. Starting in 2007, CMS

established a new unadjusted fee schedule rate for all stationary equipment with add-on payments for some types of equipment. Stationary OGPE systems received a higher add-on than concentrators because OGPEs are capable of producing refills for portable equipment. The rules direct CMS to determine *national monthly limited payment rates* for separate classes of oxygen equipment and offset higher payments for presumably more efficient OGPE with reductions for concentrators. The budget neutrality offset assumed that over time beneficiaries would increasingly migrate to OGPE.

2. Adjusted fee schedules were designed to apply competitive bidding savings to areas outside CBAs. Adjusted fee schedules are computed from regional average SPAs from suppliers' bids for oxygen concentrators.

The Medicare Modernization Act of 2003 gave CMS new authority under § 1847 to use a competitive bidding payment methodology for oxygen reimbursement. Unlike unadjusted fee schedule payments that were based on *suppliers' historical reasonable charges*, SPAs are based on *suppliers' bids* to furnish DME items to Medicare beneficiaries in a CBA. The assumption for competitive bidding is that a fee schedule methodology based on what are presumably "market" prices would generate more savings for Medicare than one based on historical supplier charges.

CMS solicits bids for Medicare covered items identified by their applicable HCPCS code then converts bids for individual items to a "composite bid" for a product category and arrays them from the lowest to highest bids. Next CMS determines how many suppliers must win a product category to maintain access for those items in a CBA. The bid point where access and price intersect is the pivotal bid. CMS awards contracts to suppliers that bid at or below the pivotal bid and otherwise meet supplier standards. The SPA is the median of the pivotal and lowest bids.

To take advantage of the program's savings in areas still paid under unadjusted fee schedules, Congress authorized CMS to deviate from the unadjusted charge based fee schedules. Amendments to § 1834 (a) required CMS to use "information" from competitive bidding programs to determine payment rates for concentrators in areas outside CBAs. For 2017 in rural areas, CMS abandoned unadjusted charge based fee schedules in favor of adjusted fee schedules derived from regional SPAs for concentrators. Adjusted fee schedule payment amounts are the un-weighted regional average SPA for concentrators, subject to national floors and ceilings. Unlike "unadjusted" fee schedules that are updated annually, CMS updates adjusted fee schedules only when new SPA data for a region become available.

Adjusted SPA based fee schedules became fully effective July 1, 2016. Adjusted fees schedule payments for concentrators in rural areas are as much as 50% less on average than they would have been under § 1834 (a) unadjusted charge based fee schedules.

3. CMS is "double dipping" payment reductions by adding a budget neutrality offset on top of the already significant payment reductions garnered from SPA based adjusted fee schedules.

CMS combined two irreconcilable fee schedule methodologies when the Agency applied the budget neutrality offset for unadjusted fee schedule payments to what were already radically lower 2017 adjusted fee schedule rates for concentrators. The results are rural area adjusted fee schedule rates for concentrators that are shockingly below what they were as recently as six months ago:

CBA ROUND	CBA REGION	HCPCS CODE	CBA RATE	1.1.2017 RURAL RATE	% DIFFERENCE
Round 1 2017	Miami-Fort Lauderdale-West Palm Beach, FL	E1390	$90.01	$77.16	-14.28%
Round 2 Recompete	Birmingham-Hoover, AL	E1390	$89.86	$77.16	-14.13%
Round 2 Recompete	Knoxville, TN	E1390	$87.00	$77.16	-11.31%
Round 2 Recompete	Raleigh, NC	E1390	$86.84	$77.16	-11.15%
Round 2 Recompete	Asheville, NC	E1390	$86.84	$77.16	-11.15%
Round 2 Recompete	Memphis, TN	E1390	$86.84	$77.16	-11.15%
Round 2 Recompete	Nashville-Davidson--Murfreesboro--Franklin, TN	E1390	$86.84	$77.16	-11.15%
Round 2 Recompete	Chattanooga, TN	E1390	$86.17	$77.16	-10.46%
Round 2 Recompete	Albuquerque, NM	E1390	$86.09	$77.16	-10.37%

CMS must act to protect beneficiary access to oxygen concentrators in rural areas by correctly re-computing the 2017 adjusted oxygen fee schedule rates without a budget neutrality offset for concentrators. Applying the offset to what are already dramatically lower adjusted fee schedule rates for concentrators reduces 2017 concentrator payment amounts in rural areas to unsustainable levels and below the regional average SPA rates on which they are based. CMS can correct this egregious mistake by correctly applying the Agency's existing rules for determining SPA based adjusted fee schedule rates for concentrators.