



May 2007

**CENTER FOR MEDICARE AND MEDICAID SERVICES ISSUES
FINAL RULES FOR COMPETITIVE BIDDING PROGRAM FOR
DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS AND SUPPLIES**

On April 2, 2007, the Center for Medicare and Medicaid Services (CMS) issued its final rules establishing a new competitive bidding program for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). This new competitive bidding program (the Program) was mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 after demonstration projects in Texas and Florida produced significant savings for beneficiaries and taxpayers.

Initially, the Program is only going into effect in the following 10 designated geographic areas known as Competitive Bidding Areas (CBAs):

- Charlotte – Gastonia – Concord, North Carolina/South Carolina
- Cincinnati – Middleton, Ohio/Kentucky/Indiana
- Cleveland – Elyria – Mentor, Ohio
- Dallas – Fort Worth – Arlington, Texas
- **Kansas City, Missouri/Kansas**
- Miami – Fort Lauderdale – Miami Beach, Florida
- Orlando – Kissimmee, Florida
- Pittsburgh, Pennsylvania
- Riverside – San Bernardino – Ontario, California
- San Juan – Caguas – Guaynabo, Puerto Rico

By 2009, the Program will be implemented in an additional 70 CBAs identified by CMS and after 2009, the Program will be expanded to additional CBAs selected by CMS.

**IMPACT OF THE
COMPETITIVE BIDDING PROGRAM**

Under the Program, CMS will be seeking bids from DMEPOS suppliers in these 10 CBAs, which set the prices at which suppliers are willing to provide certain specified categories of DMEPOS to Medicare beneficiaries. CMS will select a finite number of suppliers from among the bidders to provide each category of DMEPOS in that CBA. Only those suppliers that are selected by CMS will be eligible for payment by Medicare or any Medicare beneficiary for the nine categories of DMEPOS covered by the Program and supplied in that particular CBA:

- Oxygen Supplies and Equipment
- Standard Powered Wheelchairs, Scooters and Related Accessories
- Complex Rehabilitative Power Wheelchairs and/or Related Accessories
- Mail-Order Diabetic Supplies
- Enteral Nutrients, Equipment and Supplies
- Continuous Passive Airway Pressure (CPAP) Devices, Respiratory Assist Devices (RADs) and Related Supplies and Accessories
- Hospital Beds and Related Accessories
- Negative Pressure Wound Therapy (NPWT) Pumps and Related Supplies and Accessories
- Walkers and Related Accessories

The Program will also cover Support Surfaces (Group 2 and Group 3 Mattresses and Overlays) in the Miami, Florida and San Juan, Puerto Rico CBAs.

Once the Program is up and running, CMS will add additional items of covered DMEPOS.

**HOW THE COMPETITIVE
BIDDING PROCESS WORKS**

To participate in the Program, a supplier must first submit an Initial Registration with CMS. A supplier's Authorized Official (as identified on the supplier's CMS Medicare Enrollment Form 855S) must complete and submit CMS' Initial Registration form electronically. You can access this form at <https://applications.cms.hhs.gov/warning.html>.

Once the Initial Registration form is submitted to CMS, a user identification and password will be mailed to the Authorized Official if his/her submitted information matches exactly the data on file for last name, date of birth, social security number and supplier number. This user identification and password will be delivered in two separate mailings to the Authorized Official at the correspondence address listed in Section 2A.2 of CMS Form 855S.

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The information contained in this document is provided to alert you to legal developments and should not be considered legal advice. Specific questions about how this information affects your particular situation should be addressed to one of the individuals listed.

CMS is strongly recommending interested suppliers submit their Initial Registrations as early as possible. The window for submitting bids to CMS under the Program is expected to open some time in **late April 2007**.

Once the bidding window is open, a DMEPOS supplier must submit a bid to CMS for each category of DMEPOS it desires to provide. Each bid must include a proposed price on each item in the category or categories for which the bid is being submitted. Specific information regarding how bids are to be submitted, exactly when bidding will begin and when bidding will end has not yet been released by CMS. That information should be available shortly on CMS' Web site, www.cms.hhs.gov/center/dme.asp.

At the close of the bidding period, CMS will:

- calculate, for each CBA, the expected demand for the products in each category of DMEPOS covered by the Program;
- calculate the capacity of each supplier submitting bids in that CBA to meet the expected demand;
- establish a composite bid for each supplier that is bidding to supply a specific category of DMEPOS in that CBA;
- arrange bids from highest to lowest; and
- set the pivotal bid for each category of DMEPOS in that CBA. (The pivotal bid is the highest bid that CMS would be required to accept in that CBA in order to meet the expected demand for that category of DMEPOS by all bidders that bid at or below the specified price.)

Once the pivotal bid is determined, CMS will:

- set the single price it will pay for each item of DMEPOS in the category for that CBA. (The single price will equal the median price for that item among all bidders at or below the pivotal bid in that CBA); and
- offer a contract to supply that item of DMEPOS at the single price to all bidders in that CBA at or below the pivotal bid.

Once these contracts are awarded, only those suppliers that have been awarded a contract to supply a particular category of the DMEPOS in a CBA will be eligible for payment by Medicare or any Medicare beneficiary for that category of DMEPOS. One of the few exceptions to this rule allows physicians located in a CBA to supply certain items of DMEPOS to their patients, regardless of whether they have been awarded a contract from CMS to supply such items in that CBA. The physicians must agree to supply those items to patients for the single price specified by CMS for that CBA.

Clearly, the new DMEPOS Program will substantially alter the way in which DMEPOS are supplied to Medicare beneficiaries. In order to continue supplying DMEPOS to Medicare beneficiaries, DMEPOS suppliers located in one of the 10 identified CBAs must submit a qualifying bid to CMS before the bidding window closes. **Failure to submit a bid to CMS will effectively end that DMEPOS suppliers' ability to supply those categories of DMEPOS covered by the Program to Medicare beneficiaries located in that CBA.**

**If you have questions about this Legal Alert, please contact your
Lathrop & Gage attorney or any of the following attorneys for more information:**

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