

## **A Market Pricing Program to Fix Medicare’s Bidding System for Home Medical Equipment and Services (HME)**

The congressional objective in requiring Medicare to use competitive bidding to establish payment amounts for home medical equipment (durable medical equipment) was to reduce Medicare and beneficiary expenditures and ensure that beneficiaries have access to quality items and service. This objective cannot be met because the Centers for Medicare and Medicaid Services (CMS) has designed a program that does not hold bidders accountable, does not ensure that bidders are qualified to provide the products in the bid markets, and produces bid rates that are financially unsustainable. More than 240 market auction experts and economists have warned that the Medicare bidding program is unsustainable in its current form. It will create significant barriers to access and will destroy the HME infrastructure that seniors and people with disabilities depend on.

To fix these serious problems, independent auction experts and economists proposed a market-based pricing system for HME. The proposal, known as the Market Pricing Program (MPP), would require CMS to make fundamental changes to ensure a financially sustainable program. It uses a state-of-the-art auction system to establish market-based reimbursement rates around the country. These changes are consistent with Congress’ original intent: to create a program that is based on competition while maintaining beneficiary access to quality items and services. Key components of the MPP are:

- MPP includes the same HME items as the competitive bidding program and is implemented across the country in the same timeframe as the bidding program;
- Two product categories are bid per geographic area. Eight additional product categories in that same area would have prices adjusted based on auctions conducted simultaneously in comparable geographic areas;
- Bid areas are smaller than metropolitan statistical areas (MSAs) and more homogeneous;
- Bids are binding and cash deposits are required to ensure only serious bidders participate;
- The bid price is based on the “clearing price,” not the “median price” of winners; and,
- The same areas that are exempted under the competitive bidding program will be exempted under MPP.

Experts have spent more than a year developing changes to the current bidding program and strongly urge Congress to support MPP. **AAHomecare urges Congress to pass legislation that would change the current, flawed bidding system to a sustainable market pricing program at the earliest legislative opportunity.**

# The Medicare DMEPOS Market Pricing Program Act of 2011

## Overview

This legislation would replace the current Medicare DMEPOS competitive bidding program with a sustainable market pricing program (MPP) that is based upon sound economic principles that are embraced universally by auction experts across the country. The market pricing program would be implemented on the same timetable and apply to the same DMEPOS product categories as the current program, and it will reduce government spending for DMEPOS items nationwide. It is intended to be at least budget-neutral.

## Bill Summary

### Stop the Current Program

- The Round One rebid Medicare DME competitive bidding contracts and prices will continue through June 30, 2013, and then terminate (six months early), when the MPP pricing will take effect.
- In the nine Round 1 Rebid areas, the Secretary shall offer contracts to DMEPOS suppliers that submitted a bid for one or more of the Round One product categories, but whose bid(s) were rejected solely because of price considerations. Those bidders who accept a contract must accept the single payment amount in effect for the particular product category(s).
- The Secretary will take no further action to implement Round Two in the 91 new bid areas under the current competitive bidding program.

### Establishment of the DMEPOS Market Pricing Program (MPP)

#### Use of Experts to Design and Monitor the MPP

- The Secretary shall, within two months of enactment, contract through a competitive process with an Auction Expert for the design and implementation of the MPP, and separately, also through a competitive process, contract with an expert to serve as Market Monitor for the MPP.
- Both the Auction Expert and Market Monitor may not be a current government employee, a current or former CMS employee, or a current or former CMS contractor involved in the competitive bidding programs undertaken to date by CMS.
- Both the Auction Expert and Market Monitor must have successful experience designing and implementing auctions of similar complexity in the public sector.
- The Secretary shall make available to the Auction Expert and Market Monitor all confidential information on the relevant markets.
- The Secretary and Auction Expert are required to operate the MPP with full transparency and to post on a public Internet site operated by the Secretary all information pertinent to the MPP.

## **Timeline**

### **2012:**

- Within two months of appointment, the Auction Expert shall develop a draft auction design as the starting point for the collaborative rulemaking process.
- Within four months of appointment, the Secretary and Auction Expert shall convene a design conference to include all stakeholders, including CMS and other federal personnel, DMEPOS suppliers, beneficiaries and the DMEPOS competitive bidding Program Advisory and Oversight Committee (PAOC). The conference shall be recorded and available over the Internet.
- Within three months following the design conference, the Secretary and Auction Expert will publish the final MPP design, which, to assure transparency, shall include all financial and other qualifications for bidders, the eligible market areas and product categories to be auctioned, the protocols and timing for the conduct of the auction, the methodology by which prices will be set for the non-lead products within a product category, the methodology by which an auction price will be transferred to the same product in an economically similar eligible area in which no auction for that product was held, and an appeals process to protect suppliers.

### **2013:**

- The auctions will commence no later than March 1, 2013.
- The auctions will consist of multiple rounds of bidding (descending price), concluding when supply (from DMEPOS providers) meets demand (expected utilization) and thereby establishing the clearing price.
- A cash deposit or irrevocable letter of credit bid bond, in an amount determined by the Secretary and Auction Expert, is required for a bidder to be qualified to participate. These deposits are returned to unsuccessful bidders and retained for the successful bidders as a guarantee of performance on the contract.

### **Implementation of the MPP by July 1, 2013**

- MPP prices determined through the auction will be effective July 1, 2013, for all areas of the country not excluded by current law.
- The Secretary and Auction Expert will select a sufficient sampling of market areas for auction that will establish valid nationwide prices.
  - The first auction will cover a sample of at least 20 percent of the country and include a variety of geographic and socio-economic areas.
  - Succeeding annual auctions to cover a sample of at least 10 percent of the country.

## **Product Categories to Be Auctioned**

- Same as in current program: oxygen, standard power wheelchairs, manual wheelchairs, enteral nutrients, CPAP, hospital beds, walkers, diabetic supplies, negative pressure wound therapy and support surfaces (Group 2).
- Secretary retains current authority to compete additional categories.
- Secretary is precluded from including in MPP adjustable skin protection cushions for wheelchairs, complex rehabilitative power wheelchairs and complex manual wheelchairs (HCPCS K0005 and E1161).
- No more than two product categories may be auctioned for exclusive contracts in any one market area (defined as a city/county/aggregation of counties).
- Any qualified and willing supplier may provide non-auctioned categories in market areas at the clearing price as determined from auctions in other market areas via MPP.

## **Price Determination**

- A “lead product” is determined for each of the product categories.
- Other products are proportionately referenced (in terms of price) to the lead product price through a process designed by the Auction Expert with input from stakeholders.
- The “lead product” is auctioned (descending price) until supply (providers’ capacity) equals demand (expected utilization).
- At this point, the “clearing price” is determined and all remaining bidders are offered, and must accept, a contract at this price.
- The Secretary and Auction Expert, using an econometric model developed from the auction process, which spans a full range of geographic and socio-economic factors nationwide, determine and announce prices for all market areas not specifically excluded from MPP.
- Prices are effective July 1, 2013, and each July 1 of succeeding years for all areas not under the two-year exclusive contracts. This process annually adjusts prices to reflect true costs and rewards the most efficient providers.
- Successful bidders (i.e. those whose bids are below the clearing price) will be offered a two-year contract for that market area, and these suppliers must accept and perform the contract.

## **Bidding Requirements**

- All bidders must provide a cash deposit or irrevocable letter of credit (LOC) from a qualified institution as a bid guarantee of good faith and ability to perform. This bond will be retained as a performance guarantee for winners and returned for unsuccessful bidders.
- The capacity of each bidder will be determined based upon the bidder’s historical supply. Any new-to-the-market-area or new (start-up) suppliers having no historical supply will be assigned a standard base capacity of one percent market share.

### **Miscellaneous MPP Provisions**

- A product-specific grandfathering period may be set by the Secretary on the recommendation of the Auction Expert with oversight of the Market Monitor, with qualified suppliers to furnish products under contract in market areas.
- Small businesses are defined as \$3.5 million or less in annual revenues and shall represent at least 30 percent of total capacity in each market area.

### **Role and Responsibilities of the Market Monitor**

- Reporting to the Secretary, the Market Monitor evaluates and reports on the design, implementation and functioning of MPP for the purpose of identifying weaknesses or problems and recommending adjustments and changes.
- The Secretary shall provide the Market Monitor with access to all confidential information on the relevant markets.
- The Market Monitor shall review and report on the draft and final auction designs and participate in and report on the designs and design conference.
- The Market Monitor shall monitor supplier performance and beneficiary experience to ensure supplier compliance with standards established in the MPP and beneficiary access to quality products and services and shall provide regular reports to the Secretary on these matters and the overall operation of MPP.
- The Market Monitor shall provide an annual report to Congress on the development and operation of the MPP process, identifying potential problems and recommending solutions.

### **Other Provisions**

- The PAOC is made permanent, subject to the Federal Advisory Committee Act (FACA), and terms of PAOC members extended for an additional 3 years.
- Negative Pressure Wound Therapy—Standards will be collaboratively developed in consultation with the stakeholders as part of a new appendix to the Medicare DMEPOS Quality Standards.