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DON'T GET LEFT OUT IN THE COLD: SEE IF ROUND 2 COMPETITIVE BIDDING AFFECTS YOU

Many Durable Medical Equipment, Prosthetics, Orthotics and Supplies ("DMEPOS") suppliers are ramping up for Round 2 Competitive Bidding but not all are aware of the implications of this program or if they need to participate in this program. This alert is intended to answer some frequently asked questions about Round 2 Competitive Bidding.

HOW DID THE DMEPOS COMPETITIVE BIDDING PROGRAM COME TO BE?

Section 302 of the Medicare Modernization Act of 2003 ("MMA") established requirements for the Competitive Bidding Program for certain DMEPOS. Under the program, DMEPOS suppliers compete to become Medicare contract suppliers by submitting bids to furnish certain items in competitive bidding areas, and CMS awards contracts to enough suppliers to meet beneficiary demand for the bid items. The new, lower payment amounts resulting from the competition replaced or will replace the Medicare DMEPOS fee schedule amounts for the bid items in these areas. All contract suppliers must comply with Medicare enrollment rules, be licensed and accredited and meet financial standards. CMS believes the program will set more appropriate payment amounts for DMEPOS items while ensuring continued access to quality items and services, which will result in reduced beneficiary out-of-pocket expenses and savings to taxpayers and the Medicare program.

Under the MMA, the DMEPOS Competitive Bidding Program has been phased in so that competition under the program first occurred in ten areas in 2007. Therefore, CMS conducted the Round 1 competition in ten areas and for ten DMEPOS product categories and successfully implemented the program on July 1, 2008, for two weeks before the contracts were terminated by subsequent law.

The Medicare Improvements for Patients and Providers Act of 2008 ("MIPPA") temporarily delayed the program in 2008, terminated the Round 1 contracts that were in effect and made other limited changes. Therefore, as required by MIPPA, CMS conducted the supplier competition again in 2009, referring to it as the "Round 1 Rebid." Then on January 1, 2011, CMS launched the first phase of Medicare's Competitive Bidding Program in nine different areas of the country for nine product categories.

MIPPA required the competition for Round 2 to occur in 2011 in 70 additional metropolitan statistical areas ("MSAs") and authorizes competition for national mail order items and services after 2010. The Affordable Care Act of 2010 then expanded the number of Round 2 MSAs from 70 to 91 areas and mandates that all areas of the country are subject either to DMEPOS Competitive Bidding or payment rate adjustments using competitively bid rates by 2016. Until then, CMS expects contracts and payment amounts for Round 2 to take effect January 1, 2013.

WHAT IS ROUND 2 COMPETITIVE BIDDING?

Round 2 Competitive Bidding is expected to be as detailed and tedious a process as the Round 1 and Round 1 Rebid Competitive Bidding processes were found to be. The Round 2 Competitive Bidding Process is expected to be composed of four main steps: 1) Registration; 2) The Bid Application (Form A); 3) The Bid (Form B); and 4) Hard Copy Documentation. Given the amount of information that will need to be provided during the bidding process, we recommend that DMEPOS suppliers begin their preparations as soon as possible and prior to the registration opening.

WHAT IS THE NATIONAL MAIL ORDER COMPETITION?

The National Mail Order Competition is for diabetic supplies. The term "mail order" refers to items ordered remotely (e.g., by phone, email, etc.) and delivered to the beneficiary's residence by common carrier (e.g., U.S. Postal Services, etc.) and does not include items obtained by beneficiaries from local supplier storefronts. "Common carrier," in its basic meaning, includes individuals or companies that transport goods or cargo (e.g., diabetic testing supplies) for compensation. This means that suppliers that pay a common carrier to transport diabetic testing supplies to Medicare beneficiaries' homes are furnishing mail order diabetic supplies even if the suppliers have contract arrangements with the common carrier to deliver these items. The national mail order Competitive Bidding Areas ("CBAs") include all zip codes in all parts of the United States, including the fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.

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WHAT IS THE ROUND 2 TIMELINE?

The following table outlines the anticipated timeline for the Round 2 Competitive Bidding:

Fall 2011	• CMS Announces Bidding Schedule • CMS Begins Bidder Education Program • Bidder Registration Period to Obtain User IDs and Passwords Begins
Winter 2011/2012	• Registration Period Closes • Bid Window Opens • Covered Document Review Process Begins
Spring 2012	• Bidding Window Closes • Notify Suppliers of Missing Financial Documents
Fall 2012	• Announce Single Payment Amounts
Spring 2013	• Contract Suppliers Announced • Start Contract Supplier Education • Start Intensive Beneficiary, Referral Agent and General Supplier Education
Summer 2013	• Implement Round 2 and National Mail Order Program Contract Prices

WHAT SERVICE AREAS ARE AFFECTED BY ROUND 2?

Each CBA is an MSA, which has been defined by the U.S. Office of Management and Budget. Each MSA contains a list of cities and/or counties. Medicare defines the CBA by listing zip codes from the MSA. Click here to view the link that shows the CBAs for Round 2.

WHAT ITEMS ARE INCLUDED IN ROUND 2?

Round 2 of the DMEPOS Competitive Bidding Program includes the following categories of items and services:

- Oxygen Supplies and Equipment;
- Standard (Power and Manual) Wheelchairs, Scooters and Related Accessories;
- Enteral Nutrients, Equipment and Supplies;
- CPAP Devices, Respiratory Assist Devices and Related Supplies and Accessories;
- Hospital Beds and Related Accessories;
- Walkers and Related Accessories;
- Support Surfaces (Group 2 Mattresses and Overlays); and

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- Negative Pressure Wound Therapy Pumps and Related Supplies and Accessories.

Each product category is composed of multiple items that are identified by Healthcare Common Procedure Coding System codes. If a DMEPOS supplier is planning to bid on a product category, it must provide all items and services in that product category.

WHAT SHOULD SUPPLIERS DO NOW TO PREPARE?

Even though Round 2 Competitive Bidding has not yet started, DMEPOS suppliers can take steps to prepare themselves for the process. DMEPOS suppliers will want to take steps to ensure all licensure is up-to-date, accreditation is in place and that enrollment information is current in the National Supplier Clearinghouse. DMEPOS suppliers should consider convening a Round 2 Competitive Bidding task force to go over roles and responsibilities during the preparation and the actual bidding process. Backup Authorized Officials and End Users should be selected as well. DMEPOS suppliers may also want to begin to gather the information required for Form A and Form B that must be completed during the bidding process. Finally, DMEPOS suppliers can begin the process of calculating its planned bids prior to the bidding window opening.

If you have questions or concerns regarding the foregoing or would like additional information, please contact Todd Selby at tselby@hallrender.com or 317.977.1440, Kendra Conover at kconover@hallrender.com or 317.977.1456 or your regular Hall Render attorney.

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