

H.R. 6331

THE MEDICARE IMPROVEMENTS FOR PATIENTS AND PROVIDERS ACT:

DELAYING AND REFORMING MEDICARE'S COMPETITIVE BIDDING PROGRAM FOR DURABLE MEDICAL EQUIPMENT

The Medicare Improvements for Patients and Providers Act delays implementation of Medicare's competitive bidding program for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). It would also make improvements to the bidding process, establishes quality measures for DME suppliers in Medicare, and makes additional changes to the program. The cost of the delay would be offset by a reduction in current DMEPOS payment rates. This section of the bill is based on the Medicare DMEPOS Competitive Acquisition Reform Act, which was authored by Reps. Stark and Camp.

Medicare pays for most types of DMEPOS items using a traditional fee schedule. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires the Centers for Medicare and Medicaid Services to competitively bid a wide range of items, including oxygen equipment, standard and complex power wheelchairs, mail-order diabetic supplies, and continuous positive airway pressure (CPAP) devices. Under the program, suppliers bid to provide items for one or more of the categories in a geographic area. Based on those bids, suppliers are awarded contracts to supply the selected items to beneficiaries; suppliers that are not awarded contracts are precluded from providing Medicare beneficiaries with the competitively bid items in the covered areas.

After the initial round of bidding, many suppliers voiced concern that the rules of the bidding program were unclear, and that many companies were unfairly excluded from the process. In addition, beneficiary advocates indicated that the way the program was being implemented could threaten access to certain items and reduce the quality of goods and services.

Unless legislation is enacted to delay the program, Round 1, which affects 10 metropolitan statistical areas, is slated to start on July 1, 2008. The agency is required to begin implementation of Round 2, which will affect 70 communities, in 2009, although CMS has not released the exact schedule. After Round 2 is completed, competitive bidding may be expanded across the country and prices may be adjusted in non-bid areas using information from the bidding program. H.R. 6331 would make the following changes to the competitive bidding program:

- Terminate contracts awarded under Round 1 and restart the bidding and contracting process in those areas in 2009. The bidding process for Round 2 would begin in 2011. Payment adjustments for DMEPOS in non-competitive bid areas would not take effect until Round 2 is completed.

- Require CMS to notify bidders about paperwork discrepancies and give suppliers an opportunity to submit the proper documentation within a reasonable time frame.
- Exempt rural areas and MSAs with a population of less than 250,000 from competitive bidding for at least 5 years. Before using its authority to adjust prices in non-bid areas, CMS must issue a regulation and consider how prices set through competitive bidding compare to costs for such items in non-bid areas.
- Require all suppliers to be accredited by October 1, 2009. Ensure that all suppliers, whether they are billing Medicare directly or are a subcontractor to another supplier, be subject to accreditation. Require contracting suppliers to disclose all subcontracting relationships to CMS.
- Require that suppliers who bid on diabetic testing supplies offer a wide range of brand name products.
- Exclude complex rehabilitation wheelchairs, and related accessories when furnished with such wheelchairs, from competitive bidding. Exclude negative pressure wound therapy from Round 1 and require CMS to evaluate how these items are coded and paid.
- Establish a separate ombudsman within CMS to handle supplier and beneficiary issues related to the competitive bidding program.

The cost of delaying and reforming the program would be completely offset within the DME sector. The legislation would reduce payment rates for certain DMEPOS nationwide by 9.5 percent in 2009. In 2014, payment rates for those items which are not under a contract would be increased by 2 percent, in addition to the regular inflation-based increase they receive. The Congressional Budget Office has certified that the net cost of this section of H.R. 6331 is budget neutral over 5 years and 10 years.

In order to avoid making additional cuts to certain types of DME, the House version of the Medicare Improvements for Patients and Provider Act removes provisions in the Senate bill to reduce payments for oxygen equipment and power wheelchairs.