

CMS RELEASES FINAL RULE CONSOLIDATING HME STAKEHOLDERS

Action Seen as Final Dig at the HME Community from the Bush Administration

The Centers for Medicare and Medicaid Services (CMS) released the new interim final rule that will implement the national government consolidation of the home medical equipment (HME) providers. As you are aware, The Medicare Improvements for Patients and Providers Act (MIPPA) enacted on July 15, 2008, delayed implementation and made changes to the national consolidation program in exchange for a 9.5% cut in the DME fee schedule. The interim final rule is expected to be published in tomorrow's Federal Register and will take effect 30 days later, or on February 15th.



The Power Mobility Coalition (PMC) has major concerns with implementation of a reimbursement system that will consolidate HME providers, restrict access to needy beneficiaries and eliminate high quality American jobs. In a press release, PMC Director Eric Sokol noted, "It's an eleventh hour thumb in the eye from the Bush Administration who rushed to get out the rule before data from the aborted first round could be properly analyzed and recommendations from impacted stakeholders given." Sokol asserts that, at a minimum, CMS could issue the



regulation as a proposed rule so past will not be prologue. "Despite numerous problems which plagued the bidding process, including glitches that marred timely provider enrollment, providers being unfairly disqualified and accusations of providers gaming the bidding process in certain product categories, the interim final rule does little to address these issues."

CMS has set a 60-day comment period for the interim final rule but the Obama Administration has signaled that it will review all administrative rulemaking issued in the final days of the Bush White House. At a minimum, this would delay the notice and comment period and could provide an opportunity to petition CMS to rescind the rule.

Regardless of any review from the Obama Administration, the PMC encourages all PMD stakeholders to relay their concerns to the PMC so that they can be incorporated into PMC's comments that will be submitted to



CMS. Concerns with the rule can be sent to the PMC via e-mail at: esokol@pmcoalition.org.

The interim final rule does not set any specific date for the first round of bidding but, according to the language in the MIPPA, CMS must start the

rebidding process sometime in 2009. The second round of bidding has been delayed until 2011. Round 1 rebid will occur in the following MSAs:

- Cincinnati – Middletown (Ohio, Kentucky and Indiana)
- Cleveland – Elyria – Mentor (Ohio)
- Charlotte – Gastonia – Concord (North Carolina and South Carolina)
- Dallas – Fort Worth – Arlington (Texas)
- Kansas City (Missouri and Kansas)
- Miami – Fort Lauderdale – Miami Beach (Florida)
- Orlando (Florida)
- Pittsburgh (Pennsylvania)
- Riverside – San Bernadino – Ontario (California)

Note that San Juan, P.R. is not on the new list. Round 1 rebid will include the following product categories:

- Oxygen Supplies and Equipment
- Standard Power Wheelchairs, Scooters, and Related Accessories
- Complex Rehabilitative Power Wheelchairs and Related Accessories (Group 2)
- Mail-Order Diabetic Supplies
- Enteral Nutrients, Equipment and Supplies

- CPAP, RADs, and Related Supplies and Accessories

- Hospital Beds and Related Accessories

- Walkers and Related Accessories

- Support Surfaces (Group 2 mattresses and overlays) in Miami

The list excludes negative pressure wound therapy and group three power rehab wheelchairs from the rebid. Other changes include: Establishing a “covered document” review process for providing



feedback to providers regarding missing financial documents,

including tax or other documents required to be submitted by the bidder as part of an original bid submission and requiring HME providers that are awarded a contract under the program to disclose to CMS information regarding subcontracting relationships.

CMS RELEASES FINAL RULE FOR SURETY BONDS

The Centers for Medicare and Medicaid Services (CMS) has released the final rule implementing a



surety bond requirement for Home Medical Equipment (HME) providers, including suppliers of motorized

wheelchairs and power operated vehicles.

The final rule requires a two-tier bond requirement, with value on the bond

dependent on the DME provider's past behavior. Most existing HME providers will be required to post a \$50,000 bond for each assigned NPI. HME providers that have had an "adverse action" in the past ten years will be required to post an additional \$50,000 bond for each adverse action taken against the provider in the past ten years.

The bond requirement will take effect nine months after the implementation of the rule for existing suppliers and 120 days after implementation for new HME providers, provider's who change ownership or provider's whose supplier number applications are pending. The



rule was officially published in the Federal Register on in the next day or so and implementation of the rule will be effected 60 days after publication, which would put implementation for existing suppliers sometime in October/November 2009 and implementation for new providers in early May, 2009.

The PMC and other advocates have worked with CMS to make the rule more "palpable" to HME providers. The proposed rule had set the initial bond requirement at \$65,000 but the final rule placed the bond amount at the statutorily set \$50,000. At the request of the PMC, moreover, CMS did clarify that "adverse actions" under the rule specifically means:

(i) A Medicare-imposed revocation of any Medicare billing privileges;

(ii) Suspension or revocation of a license to provide health care by any State licensing authority;

(iii) Revocation or suspension by an accreditation organization;

(iv) A conviction of a Federal or State felony offense (as defined in §424.535(a)(3)(A)(i)) within the 10 years preceding enrollment, revalidation, or re-enrollment; or

(v) An exclusion or debarment from participation in a Federal or State health care program.

As a first step, the PMC suggests that HME providers contact bond underwriters to assess what information is need to ensure that they can get



bonded in the statutorily required timeframe. In addition to "adverse actions," bond underwriters will look to a provider's capitalization, liabilities, access to credit and background of executives and officers. CMS estimates that a bond will cost HME providers approximately 3% of the bond amount or \$1,500 for each \$50,000 bond issued.

CMS WANTS YOU TO START THE ACCREDITATION PROCESS

*With Accreditation Deadline Looming
CMS Encourages HME Providers to
Submit Applications to Accreditation
Agencies*

The Centers for Medicare & Medicaid Services (CMS) wants to ensure that HME providers have ample time to complete the accreditation process and thus receive an accreditation decision by the **September 30, 2009** deadline. In order to meet this deadline, CMS is encouraging all enrolled HME providers, except those eligible professionals and other persons exempted by law, to submit a complete accreditation application to an accreditation organization as soon as possible.

The accreditation requirement applies to suppliers of home medical equipment, including providers of power mobility devices (PMDs). Pharmacies, pedorthists, mastectomy fitters, orthopedic fitters/technicians and athletic trainers must also meet the September 30, 2009 deadline for HME accreditation.

Certain eligible professionals and other persons are exempted from the accreditation requirement including physicians, physical and occupational therapists, qualified speech-language pathologists, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers, clinical psychologists, registered dietitians/nutrition professionals, orthotists, prosthetists, opticians and audiologists.

DASCHLE WITHDRAWS FROM HHS NOMINATION

*Delay in Filling Top Health Care Spot
Could Impact Health Reform Time Line*

Both the Obama Administration and Washington observers were surprised when former Senate Majority Leader Daschle withdrew his name from consideration for the secretary of the Department of Health and Human Services (HHS), citing that his failure to pay taxes on a car-service would prove a “distraction” to the President’s efforts to reform our health care system.

Yet, a long delay in confirming an HHS Secretary could push back the timeframe for health care reform and some senior Members of Congress have publicly stated that final passage of any reform



effort may have to be put off until early 2010. This could be problematic for home medical equipment (HME) providers who will be subject to implementation of mandatory consolidation through competitive bidding sometime in 2009, unless legislation is passed to rescind or further delay this detrimental program.

Possible alternative picks for HHS Secretary, according to speculation reported by *Congressional Quarterly*, include Kansas governor Kathleen Sebelius, a former state insurance commissioner, Democratic National Committee Chair and former practicing physician Howard Dean (D-VT), Senate Finance Chair Max Baucus, Senators Barbara Mikulski (D-MD), Ron Wyden

(D-OR) and Debbie Stabenow (D-MI) and Congresswoman Rosa DeLauro (D-CT).

The PMC is supportive of efforts to expand health care coverage and extend benefits to the over 40 million of uninsured Americans. Such an expansion would ensure greater access to HME for millions of beneficiaries as well as providing HME providers greater opportunity to create internal efficiencies and lower per unit costs.

**REMINDER: ODF FOR HH,
HOSPICE AND DME SCHEDULED
FOR FEB. 18TH**

The next CMS Home Health, Hospice & DME Open Door Forum is scheduled for February 18, 2009 at 2pm (EST). There are 2 ways to participate, onsite or by phone:

1. To participate onsite at the Hubert H. Humphrey Building, RSVP and Security Clearance is required. Please RSVP no later than 2:00 PM ET, February 13, 2009. To RSVP, send your name, organization and telephone number to
HOMEHEALTH_H

OSPICE_DMEODF-L@cms.hhs.gov.
Be sure to include "Home Health" in the subject line.

**ADDRESS: Hubert H. Humphrey Bldg.,
200 Independence Avenue S.W.,
Washington, D.C. 20201**

2. To participate by phone:

Dial: 1-800-837-1935 & Reference Conference ID: 70015483. Persons participating by phone are not required to RSVP. You can also hear an encore of the call by dialing 1-800-642-1687; Conf. ID# 70015483.

**CMS PROPOSES DELAY OF
INTERIM FINAL RULE THAT
WOULD CONSOLIDATE HME
PROVIDERS**

*Obama Administration Seeks to Review
Rules Released in Final Days of the of
the Bush White House*

The Centers for Medicare and Medicaid published today, a notice of a proposed delay for the effective date of the interim final rule on competitive bidding. The Notice summary states:

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review," CMS is seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled "Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)," published in the **Federal Register** on January 16, 2009 (74 FR 2873). That rule implements certain MIPPA provisions that delay implementation of Round 1 of the competitive bidding



program; requires CMS to conduct a second Round 1 competition (the "Round 1 rebid") in 2009; and mandates certain changes for both the Round 1 rebid and subsequent rounds of the program, including a process for providing feedback to suppliers regarding missing financial documentation and requiring contractors to disclose to CMS information regarding subcontracting relationships. CMS is considering a temporary 60- day delay in effective date to allow CMS officials the opportunity for further review of the issues of law and policy raised by this rule, consistent with the Chief of Staff's memorandum of January 20, 2009. CMS solicits comments specifically on the contemplated delay in effective date and generally on the rule entitled "Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)."

http://www.federalregister.gov/OFRUpload/OFRData/2009-02839_PI.pdf

The PMC has identified several concerns with the interim final rule and will submit comments to CMS urging its rescission. At a minimum, CMS must provide for meaningful notice and comment by all impacted stakeholder prior to implementation of any reimbursement system that will force a

mandatory consolidation of home medical equipment providers.

CMS will be accepting comments on a delay in the effective date of the competitive bidding interim final rule through February 12, 2009. Comments may be submitted electronically at www.regulations.gov.